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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 4279

RIN 0570–AA39

Business and Industry Loans; Revisions to Implement 2002 Farm Bill Provisions

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Rural Business-Cooperative Service (RBS) revises its regulations to incorporate provisions outlined in Sections 6013, 6017, and 6019 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 104–424) (2002 Farm Bill). This action is taken to comply with the amendments to sections 310(B) and 333A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932 and 1983a). The intended effect of this action is to expand eligibility for the Business and Industry Guaranteed Loan Program, provide for a simplified application form for loans of up to $600,000, and allow the Agency to require specialized appraisals on collateral.

DATES: The effective date of this interim final rule is December 9, 2004. Written or e-mail comments must be received on or before December 9, 2004, to be assured of consideration.

ADDRESSES: You may submit commments to this rule by any of the following methods:

- Agency Web Site: *http://rdinit.usda.gov/regs/*. Follow instructions for submitting comments on the Web Site.
- E-mail: *comments@usda.gov*. Include the RIN No. 0570–AA39 in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- Hand Deliver/Courier: Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, Loan Specialist, Business and Industry Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Ave. SW., Washington, DC 20250–3224. Telephone: (202) 720–6802. The TDD number is (800) 877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.768, Business and Industry Loans.

Intergovernmental Review

The Business and Industry loan programs are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with state and local officials. RBS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Department of Agriculture Programs and Activities'' in 7 CFR part 3015, subpart V.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0570–0014 and 0570–0017, in accordance with the Paperwork Reduction Act (PRA) of 1995.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. Some provisions published as a part of this rule are, in fact, a benefit to small entities. Eligibility for the cooperative stock purchase program, a program that provides loan guarantees for the purchase of stock in a cooperative by an individual farmer or rancher, has been expanded to include more entities. Additionally, provisions allow the Agency to accept financial statements from farmers and ranchers that are generally accepted by commercial agricultural lenders. Since this rule has no significant economic impact on a substantial number of small entities, a regulatory flexibility analysis was not performed.

Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing litigation challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major Federal action significantly affecting the quality

of the human environment and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Background

The 2002 Farm Bill contains provisions to be incorporated into existing Business and Industry program regulations. Changes include specifically adding renewable energy systems to eligible loan purposes, allowing the Agency to require specialized appraisals, and using a simplified application for loans of up to $600,000. The cooperative stock purchase program has also been expanded to allow for guaranteed loans to purchase stock in existing cooperatives, to allow for cooperatives whose members receive cooperative stock purchase loans to contract for services to process agricultural commodities or otherwise process value-added agricultural products during its first 5 years, and to allow the Agency to accept financial statements from farmers and ranchers that are generally accepted by commercial agricultural lenders. The 2002 Farm Bill also contains provisions (under certain conditions) that allow cooperative organizations to apply for guaranteed loans for the financing of facilities in non-rural areas, for the refinancing of existing B&I loans, and in amounts up to $40 million.

These revisions are being published as an interim final rule because the changes being made are mandated by sections 6013, 6017, and 6019 of the 2002 Farm Bill and provide limited administrative discretion. This interim final rule will be effective 30 days after publication, and a final rule will be published at a later date addressing any comments received. Section 6020 of the 2002 Farm Bill created a new definition of ''rural'' and ''rural area'' for the B&I Guaranteed Loan Program. Part of that new definition precludes loans being made in ''* * * a city or town that has a population of greater than 50,000 inhabitants. * * *'' Many States have communities that while not legally designated as ''towns'' under State law are the functional equivalent (*e.g.*, villages or boroughs, or for which there is State law recognition as an incorporated general purpose public entity). RBS believes it is consistent with the intent of the 2002 Farm Bill to include these functionally equivalent localities in the meaning of ''town'' and proposes to do so in the future. RBS requests public comment on this position.

List of Subjects in 7 CFR Part 4279

Loan programs—Business and industry, Loan Programs—Rural development assistance, Rural areas.

■ Accordingly, chapter XLII, title 7, Code of Federal Regulations, is amended as follows:

CHAPTER XLII—[AMENDED]

PART 4279—GUARANTEED LOANMAKING

■ 1. The authority citation for part 4279 continues to read as follows:

Authority: 7 U.S.C. 1989.

Subpart B—Business and Industry Loans

■ 2. Section 4279.108 is amended by revising paragraphs (a) introductory text, (a)(4), and (c); redesignating paragraph (d) as paragraph (e); and by adding a new paragraph (d) to read as follows:

§ 4279.108 Eligible borrowers.

(a) *Type of entity.* A borrower may be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual. A cooperative organization is a cooperative or an entity, not chartered as a cooperative, that operates as a cooperative in that it is owned and operated for the benefit of its members, including the manner in which it distributes its dividends and assets. A borrower must be engaged in or proposing to engage in a business. Business may include manufacturing, wholesaling, retailing, providing services, or other activities that will:

* * * * *

(4) Reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems and other renewable energy systems (including wind energy systems, geothermal energy systems, and anaerobic digesters for the purpose of energy generation).

* * * * *

(c) *Rural area.* The business financed with a B&I Guaranteed Loan must be located in a rural area, except for cooperative organizations financed in accordance with paragraph (d)(3) of this section. Loans to borrowers with facilities located in both rural and non-rural areas will be limited to the amount necessary to finance the facility in the eligible rural area, except for cooperative organizations financed in accordance with paragraph (d)(3) of this section. Rural areas are any areas other than:

(1) A city or town that has a population of greater than 50,000 inhabitants; and

(2) The urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

(d) *Loans to cooperative organizations.* (1) B&I loans to eligible cooperative organizations may be made in principal amounts up to $40 million if the project is located in a rural area, the cooperative facility being financed provides for the value-added processing of agricultural commodities, and the total amount of loans exceeding $25 million does not exceed 10 percent of the funds available for the fiscal year.

(2) Cooperative organizations that are headquartered in a non-rural area may be eligible for a B&I loan if the loan is

used for a project or venture that is located in a rural area.

(3) B&I loans to eligible cooperative organizations may also be made in non-rural areas provided:

(i) The primary purpose of the loan is for a facility to provide value-added processing for agricultural producers that are located within 80 miles of the facility;

(ii) The applicant satisfactorily demonstrates that the primary benefit of the loan will be to provide employment for rural residents;

(iii) The principal amount of the loan does not exceed $25 million; and

(iv) The total amount of loans guaranteed under this section does not exceed 10 percent of the funds available for the fiscal year.

(4) An eligible cooperative organization may refinance an existing B&I loan provided that the existing loan is current and performing, the existing loan is not and has not been in payment default (more than 30 days late) or the collateral of which has not been converted, and there is adequate security or full collateral for the new B&I loan.

* * * * *

■ 3. Section 4279.113 is amended by redesignating paragraphs (j) through (aa) to be paragraphs (k) through (bb); by revising paragraphs (i) and newly redesignated paragraph (r); and by adding a new paragraph (j) to read as follows:

§ 4279.113 Eligible loan purposes.

* * * * *

(i) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided that the purchase is required for all of their borrowers.

(j) Purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative established for the purpose of processing an agricultural commodity.

(1) The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative.

(2) Notwithstanding §§ 4279.131(d) and 4279.137, the individual farmer or rancher may provide financial information in the manner that is generally required by commercial agricultural lenders in order to obtain a loan.

* * * * *

(r) To refinance outstanding debt when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Except as provided for in § 4279.108(d)(4) of this subpart, existing lender debt may be included provided that, at the time of application, the loan has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt), the lender is providing better rates or terms, and the refinancing is a secondary part (less than 50 percent) of the overall loan.

* * * * *

■ 4. Section 4279.119(a) is revised to read as follows:

§ 4279.119 Loan guarantee limits.

(a) *Loan amount.* The total amount of Agency loans to one borrower, including: The guaranteed and unguaranteed portions; the outstanding principal and interest balance of any existing Agency guaranteed loans; and new loan request, must not exceed $10 million, except as outlined in paragraphs (a)(1) and (2) of this section.

(1) The Administrator may, at the Administrator's discretion, grant an exception to the $10 million limit for loans of $25 million or less under the following circumstances:

(i) The project to be financed is a high-priority project. Priority will be determined in accordance with the criteria contained in § 4279.155 of this subpart;

(ii) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the guarantee is not approved;

(iii) The percentage of guarantee will not exceed 60 percent. No exception to this requirement will be approved under paragraph (b) of this section for loans exceeding $10 million; and

(iv) Any request for a guaranteed loan exceeding the $10 million limit must be submitted to the Agency in the form of a preapplication. The preapplication must be submitted to the National Office for review and concurrence before encouraging a full application.

(2) The Secretary, whose authority may not be redelegated, may approve guaranteed loans in excess of $25 million, at the Secretary's discretion, for rural cooperative organizations that process value-added agricultural commodities in accordance with § 4279.108(d)(1) of this subpart.

* * * * *

■ 5. Section 4279.144 is revised to read as follows:

§ 4279.144 Appraisals.

Lenders will be responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions will meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP). In accordance with USPAP, the Agency will require documentation that the appraiser has the necessary experience and competency to appraise the property in question. All appraisals will include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral. For additional guidance and information concerning the completion of real property appraisals, refer to ''Standard Practices for Environmental Site Assessments: Transaction Screen Questionnaire'' and ''Phase I Environmental Site Assessment,'' both published by the American Society of Testing and Materials. Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value.

■ 6. Section 4279.161 is amended by adding a sentence at the end of the introductory text and by adding paragraph (c) to read as follows:

§ 4279.161 Filing preapplications and applications.

* * * Guaranteed loans of $600,000 and less may be processed under paragraph (b) or (c) of this section, but guaranteed loans exceeding $600,000 must be processed under paragraph (b) of this section.

* * * * *

(c) *Applications of $600,000 and less.* Guaranteed loan applications may be processed under this paragraph if the request does not exceed $400,000. Beginning in fiscal year 2004, this limit may be increased on a case-by-case basis to $600,000 provided that the Agency determines that there is not a significant increased risk of a default on the loan. Applications may be resubmitted under paragraph (b) of this section when the application under this paragraph contains insufficient information for the Agency to guarantee the loan. Applications submitted under this paragraph must use the Agency's short

application form and include the information contained in paragraphs (b)(3), (5), (7), (8), and (11) of this section. The lender must have the documentation identified in paragraph (b) of this section, with the exception of paragraphs (b)(1), (2), (14), and (15), available in its file for review.

Dated: November 2, 2004.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.

[FR Doc. 04–24886 Filed 11–8–04; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18579; Directorate Identifier 2004–CE–19–AD; Amendment 39–13856; AD 2004–23–01]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Model PC–7 airplanes with any Lear Romec RR53710B type or Lear Romec RR53710K fuel booster pump (Pilatus part number 968.84.11.401; 968.84.11.403; or 968.84.11.404) installed. This AD requires you to check the airplane logbook to determine whether any installed fuel booster pump has been modified with spiral wrap to protect the wire leads and has the suffix letter ''B'' added to the serial number of the fuel booster pump identification plate. If any installed fuel booster pump has not been modified, you are required to inspect any installed fuel booster pump wire lead for defects; if defects are found, replace the fuel booster pump with a modified fuel booster pump with spiral wrap that protects the wire leads; or if no defects are found, install spiral wrap to protect any wire leads and add the suffix letter ''B'' to the serial number of the fuel booster pump identification plate. The pilot is allowed to do the logbook check. If the pilot can positively determine that the fuel booster pump wire leads with spiral wrap are installed following the service information and that the suffix letter ''B'' is included in the serial number of the fuel booster pump identification plate, no further action is required. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this AD to detect and correct any defects in the leads of any fuel booster pump, which could result in electrical arcing. This failure could lead to a fire or explosion in the fuel tank.

DATES: This AD becomes effective on December 27, 2004.

As of December 27, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilaltus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–18579.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Model PC–7 airplanes. The FOCA reports that there have been 11 reports of damaged fuel boost pump wire leads from 9 Model PC–12 airplanes that have a similar type design. Further, the FOCA reports that it is possible that the wire leads to the left and right fuel pumps are damaged. This could possibly cause electrical arcs from the leads in an air/fuel mixture.

What is the potential impact if FAA took no action? Any electrical arcing could lead to a fire or explosion in the fuel tank.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Model PC–7 airplanes with any Lear Romec RR53710B type or Lear Romec RR53710K fuel booster pump (Pilatus part number 968.84.11.401; 968.84.11.403; or 968.84.11.404) installed. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 20, 2004 (69 FR 516161). The NPRM proposed to require you to check the airplane logbook to determine whether any installed fuel booster pump has been modified with spiral wrap to protect the wire leads and has the suffix letter ''B'' added to the serial number of the fuel booster pump identification plate. If any installed fuel booster pump has not been modified, you are required to inspect any installed fuel booster pump wire lead for defects; if defects are found, replace the fuel booster pump with a modified fuel booster pump with spiral wrap that protects the wire leads; or if no defects are found, install spiral wrap to protect any wire leads and add the suffix letter ''B'' to the serial number of the fuel booster pump identification plate. The pilot is allowed to do the logbook check. If the pilot can positively determine that the fuel booster pump wire leads with spiral wrap are installed following the service information and that the suffix letter ''B'' is included in the serial number of the fuel booster pump identification plate, no further action is required.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 10 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	Not applicable	$65	$65 × 10 = $650.

We estimate the following costs to do any necessary replacement of any fuel boost pump, including the installation of any wire wrap, that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need this installation:

Labor cost	Parts cost	Total cost per airplane
5 workhours × $65 per hour = $325	$2,800 for each fuel booster pump	$2,800 × $325 = $3,125 for each fuel booster pump installation.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–18579; Directorate Identifier 2004–CE–19–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2004–23–01 Pilatus Aircraft Ltd.: Amendment 39–13856; Docket No. FAA–2004–18579; Directorate Identifier 2004–CE–19–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on December 27, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model PC–7 airplanes, serial numbers 101 through 618, that are:

(1) equipped with Lear Romec RR53710B type or Lear Romec RR53710K fuel booster pump, Pilatus part number (P/N) 968.84.11.401; 968.84.11.403; or 968.84.11.404; and

(2) certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to detect and correct any defects in the leads of any fuel booster pump, which could result in electrical arcing. This failure could lead to a fire or explosion in the fuel tank.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Check the airplane logbook to to ensure that any fuel booster pump (part number (P/N) 968.84.11.401; 968.84.11.403; or 968.84.11.404) has been modified with spiral wrap to protect the wire leads and has the suffix letter ''B'' added to the serial number of the fuel booster pump identification plate as required by paragraph (e)(5) of this AD.	Within 50 hours time-in-service (TIS) after December 27, 2004 (the effective date of this AD), unless already done.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.

Actions	Compliance	Procedures
(2) If you can positively determine that any fuel booster pump (P/N 968.84.11.401; 968.84.11.403; or 968.84.11.404) has been modified following the Accomplishment Instructions—Aircraft section in Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003, and has the suffix letter "B" added to the serial number of the fuel booster pump identification plate as required by paragraph (e)(5) of this AD, then no further action is required.	Not Applicable	Make logbook entry.
(3) Inspect any fuel booster pump (P/N 968.84.11.401; 968.84.11.403; or 968.84.11.404) leads for any defects.	Within 50 hours TIS after December 27, 2004 (the effective date of this AD), unless already done.	Follow the Accomplishment Instructions—Aircraft section in Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003. This subject is also addressed in the Pilatus PC–7 Airplane Maintenance Manual.
(4) If any defect is found during the inspection required by paragraph (e)(3) of this AD, replace the fuel booster pump.	Before further flight after the inspection required by paragraph (e)(3) of this AD in which any defect is found.	Follow the Accomplishment Instructions—Aircraft section in Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003. This subject is also addressed in the Pilatus PC–7 Airplane Maintenance Manual.
(5) If no defects are found during the inspection required by paragraph (e)(3) of this AD, modify any fuel booster pump (P/N 968.84.11.401; 968.84.11.403; or 968.84.11.404) by installing the lead inspection by using a spiral wrap. After doing the modification, re-identify the fuel booster pump (P/N 968.84.11.401; 968.84.11.403; or 968.84.11.404) by adding the suffix letter "B" to the serial number of the fuel booster pump identification plate.	Before further flight after the inspection required by paragraph (e)(3) of this AD where no defect is found.	Follow the Accomplishment Instructions—Aircraft section in Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003. This subject is also addressed in the Pilatus PC–7 Airplane Maintenance Manual.
(6) Do not install any fuel booster pump (P/N 968.84.11.401; 968.84.11.403; or 968.84.11.404) that has not been modified and identified with the suffix letter "B" to the serial number of the fuel booster pump identification plate.	As of December 27, 2004 (the effective date of this AD).	Follow the Accomplishment Instructions—Spares section in Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003.

Note 1: The FAA recommends that you incorporate Pilatus PC–7 Maintenance Manual No. 28–20–03, dated November 30, 2003, and Pilatus PC–7 Maintenance Manual No. 12–10–01, dated November 30, 2003, in the appropriate section of the airplane maintenance manual.

Note 2: Wiring defects are addressed in paragraph 11–97 in FAA Advisory Circular (AC) 43.13–1B.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) Swiss AD Number HB–2004–210, issue dated June 11, 2004, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Pilatus PC–7 Service Bulletin No. 28–009, dated October 6, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilaltus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–18579.

Issued in Kansas City, Missouri, on October 29, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24717 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–06–AD; Amendment 39–13852; AD 2004–22–24]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 707 and 720 series airplanes, that currently requires inspections of the upper and lower chords of the wing front and rear spars, repair if necessary, and application of corrosion inhibitor to the inspected areas. This amendment removes the requirements of the existing AD, requires new detailed inspections and new high frequency eddy current (HFEC) inspections for corrosion and cracking, and requires certain related follow-on and investigative actions, if necessary. This amendment also expands the area of inspection to include the dry bay areas. The actions specified by this AD are intended to find and fix corrosion and stress corrosion cracking of the upper and lower chords on the wing front and rear spars, which could result in reduced structural integrity of the wing. This action is intended to address the identified unsafe condition.

DATES: Effective December 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–08–02, amendment 39–12179 (66 FR 20383, April 23, 2001), which is applicable to all Boeing Model 707 and 720 series airplanes, was published in the **Federal Register** on June 3, 2004 (69 FR 31325). The action proposed to remove the requirements of the existing AD, require new detailed inspections and new high frequency eddy current (HFEC) inspections for corrosion and cracking, and require certain related follow-on and investigative actions, if necessary. The action also proposed to expand the area of inspection to include the dry bay areas.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Waive the HFEC Inspections

The commenter requests that the proposed AD be revised to permit a waiver for the HFEC inspections. The commenter states that it has been doing the close visual inspections specified in Boeing Alert Service Bulletin 3240, Revision 4, dated September 6, 2001 (referenced as the appropriate source of service information in the proposed AD), and has not found any evidence of cracks. The commenter also states that doing HFEC inspections, in addition to the close visual inspections, would cause an adverse economic impact on its operations due to additional down-time of the airplane to accommodate HFEC inspections.

The FAA does not agree to ''waive'' the requirement to perform the HFEC inspections. As explained in the preamble of the proposed AD, we have received a report indicating that, six months after an operator performed the visual inspections specified in Revision 3 of Boeing Service Bulletin 3240 (specified in AD 2001–08–02 as an appropriate source of service information) a 31-inch crack was detected during a routine inspection. We have determined that the detailed ''visual'' inspections required by the previous AD are not sufficient to ensure that evidence of cracking is detected in a timely manner. Therefore, we find that HFEC inspections are necessary to ensure timely detection of any evidence of cracking. No change has been made to this final rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 230 airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD.

The new actions in this AD do not include those actions required by AD 2001–08–02. Therefore, cost impact figures for those actions are not necessary nor provided for in this AD.

The new actions required by this AD will take approximately 212 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $578,760, or $13,780 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12179 (66 FR 20383, April 23, 2001), and by adding a new airworthiness directive (AD), amendment 39–13852, to read as follows:

2004–22–24 Boeing: Amendment 39–13852, Docket 2003–NM–06–AD. Supersedes AD 2001–08–02, Amendment 39–12179.

Applicability: All Model 707 and 720 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To find and fix corrosion and stress corrosion cracking of the upper and lower spar chords on the front and rear spars of the wing, which could result in reduced structural integrity of the wing, accomplish the following:

Superseding the Requirements of AD 2001–08–02

Note 1: As of the effective date of this AD, the requirements of AD 2001–08–02, amendment 39–12179, are no longer effective or required.

Definition of Service Bulletin

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3240, Revision 4, dated September 6, 2001.

Detailed Inspection

(b) Within 30 days after the effective date of this AD, do a detailed inspection of the entire length of the external surfaces of the front and rear wing spar chords and the internal surfaces of the front spar chords in the dry bays of the wings for corrosion, any signs of corrosion (*e.g.*, blistering or signs of fuel leaks), or cracking; per the service bulletin. If no corrosion or cracking is found, before further flight: Except as specified in paragraph (e) of this AD, accomplish any applicable follow-on actions or investigative actions, per the service bulletin.

Other Repetitive Inspections

(c) Within 6 months after the effective date of this AD, perform a detailed inspection and a high frequency eddy current (HFEC) inspection of the entire length of the external surfaces of the front and rear wing spar chords and the internal surfaces of the front spar chords in the dry bays of the wings for any corrosion, signs of corrosion (*e.g.*, blistering or signs of fuel leaks), or cracking; per the service bulletin. If no corrosion or cracking is found, before further flight, accomplish any applicable follow-on or investigative actions specified in the service bulletin and the actions specified in paragraph (e) of this AD. Thereafter, repeat the detailed and HFEC inspections at intervals not to exceed 12 months.

Repair of Corrosion

(d) If any corrosion or signs of corrosion (*e.g.*, blistering or signs of fuel leaks) are found during any inspection required by this AD: Before further flight, repair per paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If the corrosion is within the areas and limits specified in the service bulletin: Except as required by paragraph (e) of this AD, repair and accomplish all applicable follow-on and investigative actions, per the service bulletin.

(2) If the corrosion is outside the areas or limits specified in the service bulletin, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Application of Corrosion Inhibitor

(e) Where the service bulletin specifies to apply BMS 3–23 (a corrosion inhibitor) or a Boeing approved equivalent, this AD requires that BMS 3–23 must be used or that any application of an equivalent corrosion inhibitor be approved by the Manager, Seattle ACO, or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Repair of Cracking

(f) If any cracking is found during any inspection required by this AD, including cracks that have been previously stop-drilled but not permanently repaired: Before further flight, repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD. Operators should note that ''stop drilling'' of cracks as a means to defer repair is not permitted by this AD.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing 707 Alert Service Bulletin A3240, Revision 4, dated September 6, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or for information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(i) This amendment becomes effective on December 14, 2004.

Issued in Renton, Washington, on October 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24627 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–246–AD; Amendment 39–13854; AD 2004–22–26]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes. This AD requires repetitive inspections for evidence of corrosion and sheared attachment bolts of the sensor struts at flap track 4 on the left and right sides of the airplane; related

investigative and corrective actions as necessary; and a terminating action for the repetitive inspections, by requiring the eventual replacement of all sensor struts with new, improved sensor struts that are less sensitive to corrosion. The actions specified by this AD are intended to prevent loss of the sensor strut function, resulting in the inability to detect flap drive disconnection at flap track stations 4 and 5, which could lead to separation of the outboard flap from the airplane, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 2, 2004 (69 FR 53658). That action proposed to require repetitive inspections for evidence of corrosion and sheared attachment bolts of the sensor struts at flap track 4 on the left and right sides of the airplane; related investigative and corrective actions as necessary; and a terminating action for the repetitive inspections, by requiring the eventual replacement of all sensor struts with new, improved sensor struts that are less sensitive to corrosion. That action also proposed to change the threshold for the initial inspection and reduce the compliance time for the terminating action of the original NPRM.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Change to This Final Rule

The date of the original issue of Airbus Service Bulletin A330–27–3091 has been corrected in paragraph (e) of this AD. The date on the actual original issue of the service bulletin is February 6, 2002. The revision history in Revisions 01, 02, and 03 of the service bulletin, and the dates on those revisions, indicate that the date of the original issue of the service bulletin is February 2, 2002. The wrong date was inadvertently cited in the NPRM and supplemental NPRM.

Conclusion

We have determined that air safety and the public interest require the adoption of the rule with the change described previously. This change will neither increase the economic burden on any operator not increase the scope of the AD.

Cost Impact

We estimate that 9 Airbus Model A330 airplanes of U.S. registry will be affected by this AD.

It will take 1 work hour per airplane to accomplish the repetitive inspections, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspections on U.S. operators is estimated to be $585, or $65 per airplane, per inspection cycle.

If required, it will take approximately 3 work hours per airplane to accomplish the replacement of discrepant sensor struts and attachment bolts, at an average labor rate of $65 per work hour. The cost for required parts will be nominal. Based on these figures, the cost impact of the replacement of sensor struts will be $195 per airplane.

It will take approximately 2 work hours per airplane to accomplish the installation of the new, improved sensor struts, at an average labor rate of $65 per work hour. The cost of required parts will be $8,400. Based on these figures, the cost impact of the installation on U.S. operators is estimated to be $76,770, or $8,530 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no Airbus Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 1 work hour per airplane to accomplish the inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection for Model A340 operators will be $65 per airplane, per inspection cycle.

Should an Airbus Model A340 series airplane be imported and placed on the U.S. Register in the future and have affected sensor struts and attachment bolts replaced, it will take approximately 3 work hours, at an average labor rate of $65 per work hour. The cost for required parts will be nominal. Based on these figures, the cost impact of the replacement of sensor struts for Model A340 operators will be $195 per airplane.

Should an Airbus Model A340 series airplane be imported and placed on the U.S. Register in the future and have new, improved sensor struts installed, it would take approximately 2 work hours, at an average labor rate of $65 per work hour. The cost for required parts will be $8,400. Based on these figures, the cost impact of the installation for Model A340 operators would be $8,530 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–22–26 Airbus: Amendment 39–13854. Docket 2002–NM–246–AD.

Applicability: Model A330 series airplanes; and Model A340–200 and A340–300 series airplanes; certificated in any category; except those airplanes on which Airbus Modification 48579 was incorporated in production.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the sensor strut function, resulting in the inability to detect flap drive disconnection at flap track stations 4 and 5, which could lead to separation of the outboard flap from the airplane, and consequent reduced controllability of the airplane; accomplish the following:

Inspection

(a) At the latest of the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD: Do an inspection, by applying hand force to the piston of the sensor struts and moving the sensor struts longitudinally, for evidence of corrosion in the sensor struts at flap track 4, on the left and right sides of the airplane, by doing all the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A330–27–3091, Revision 03 (for Model A330 series airplanes); or Service Bulletin A340–27–4097, Revision 03 (for Model A340–200 and –300 series airplanes); both dated January 16, 2004; as applicable. If the longitudinal travel range is 60.0 millimeters (2.36 inches) or more: Repeat the inspection thereafter at intervals not to exceed 18 months, until the requirements of paragraph (d) of this AD are accomplished.

(1) Within 18 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever occurs first.

(2) Within 2,800 flight hours after the effective date of this AD.

(3) Within 6 months after the effective date of this AD.

Related Investigative and Corrective Actions

(b) If the result of the inspection required by paragraph (a) of this AD is a longitudinal travel range of less than 60.0 mm (2.36 inches): Before further flight, remove all affected sensor struts, and measure the axial force of any affected sensor struts, by doing all of the applicable actions per the Accomplishment Instructions of Airbus Service Bulletin A330–27–3091, Revision 03 (for Model A330 series airplanes); or Service Bulletin A340–27–4097, Revision 03 (for Model A340–200 and –300 series airplanes); both dated January 16, 2004; as applicable.

(1) If the axial force F is less than or equal to 50 daN (112.41 lbf.): Clean and re-install the sensor struts per the Accomplishment Instructions of the applicable service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 18 months, until the requirements of paragraph (d) of this AD are accomplished.

(2) If the axial force F is more than 50 daN (112.41 lbf.): Before further flight, do a detailed inspection for cracking and/or deformation of the adjacent structure and attachment parts per the Accomplishment Instructions of the applicable service bulletin.

(i) If no cracking and/or deformation is found: Re-install the sensor struts and within 25 flight cycles after the inspection required by paragraph (b) of this AD, replace the sensor struts and attachment bolts per the Accomplishment Instructions of the applicable service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 18 months, until the requirements of paragraph (d) of this AD are accomplished.

(ii) If any cracking and/or deformation is found: Before further flight, repair any cracked or deformed structure and attachment parts per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent); and replace the sensor struts and attachment bolts per the Accomplishment Instructions of the applicable service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 18 months, until the requirements of paragraph (d) of this AD are accomplished.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Concurrent Requirements

(c) The actions required by paragraphs (a) and (b) of this AD must be done before or concurrently with the requirements of paragraph (d) of this AD. Replacement of any sensor strut with a sensor strut having part number (P/N) F5757492600000, during accomplishment of paragraph (b) of this AD, is acceptable for compliance with paragraph (d) of this AD, for that strut.

Terminating Action

(d) Within 30 months after the effective date of this AD: Replace all existing sensor struts with new, improved sensor struts having P/N F5757492600000 per the Accomplishment Instructions of Airbus Service Bulletin A330–27–3092 (for Model A330 series airplanes); or Service Bulletin A340–27–4098 (for Model A340–200 and –300 series airplanes); both dated February 14, 2003; as applicable. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

Actions Done per Previous Issue of Service Bulletins

(e) Accomplishment of the specified actions before the effective date of this AD per Airbus Service Bulletin A330–27–3091, dated February 6, 2002, Revision 01, dated May 17, 2002, or Revision 02, dated September 5, 2002; or A340–27–4097, dated February 6, 2002, Revision 01, dated May 17, 2002, or Revision 02, dated September 5, 2002; as applicable; is considered acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of this AD.

Submission of Information Not Required

(f) Although the service bulletins specify to send inspection results to the manufacturer, that action is not required by this AD.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable Airbus service bulletins listed in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A330–27–3091	03	Jan. 16, 2004.
A330–27–3092	Original ..	Feb. 14, 2003.
A340–27–4097	03	Jan. 16, 2004.
A340–27–4098	Original ..	Feb. 14, 2003.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be

inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in French airworthiness directives F–2003–425 and F–2003–426, both dated December 10, 2003.

Effective Date

(i) This amendment becomes effective on December 14, 2004.

Issued in Renton, Washington, on October 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24625 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–409–AD; Amendment 39–13853; AD 2004–22–25]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200, –300, and –300F series airplanes, that requires a one-time inspection for discrepancies of all wire bundles, including certain power feeder cables, of the electrical system in the forward cargo compartment ceiling at certain stations; and corrective actions if necessary. This action is necessary to prevent damage to wire bundles, particularly those of the fuel quantity indication system (FQIS), which are located in the subject area. Damage of FQIS wires could cause arcing between those wires and power wires in the damaged wire bundle, and may lead to transmission of electrical energy into the fuel tank, which would result in a potential source of ignition in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective December 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6478; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, and –300F series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 28, 2003 (68 FR 4116). That action proposed to require a one-time detailed inspection to detect discrepancies of all wire bundles routed along the ceiling of the forward cargo compartment at certain stations; and corrective actions if necessary.

Explanation of New Service Information

Since the issuance of the supplemental NPRM, Boeing issued and we reviewed Revision 3 of Boeing Service Bulletin 767–24A0128, dated June 24, 2004. (The supplemental NPRM referred to Revision 2 of the service bulletin as the appropriate source of service information for accomplishing the proposed actions.) Revision 3 adds a new Figure 2 to clarify the instructions for inspecting the power feeder cables and installing sleeving, and clarifies the instructions for installing sleeving and lacing tape in Figure 1. Revision 3 also corrects a typographical error that resulted in the reference to an incorrect station; the supplemental NPRM specified the correct station. No more work is necessary on airplanes changed in accordance with Revision 2 or earlier releases of the service bulletin, provided that the required inspection and applicable corrective actions are done on all wire bundles, including power feeder cables W208 and W236, of the electrical system in the forward cargo compartment from stations 368 through 742 and from right buttock lines (RBL) 40 through 70, routed along the ceiling.

In light of the changes to the service bulletin described above, we have revised paragraphs (a) and (a)(2) and the preamble of this AD accordingly, to clarify the inspection area and clearance measurements. In addition, we have revised the final rule to refer to Revision 3 of the service bulletin as the appropriate source of service information for accomplishing the required actions and added a new paragraph (b) to give operators credit for accomplishing the required actions before the effective date of the AD, in accordance with Revision 2 or earlier releases of the service bulletin with the provision described previously.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Extend Compliance Time

One commenter requests that the compliance time for the proposed inspection specified in paragraph (a) of the supplemental NPRM be extended from 18 to 24 months to coincide with regularly scheduled ''C'' checks. The commenter states that the proposed compliance time of 18 months will require approximately one-fourth of its fleet to be scheduled at special times for the accomplishment of the inspection at additional expense. The commenter also states that a detailed inspection was done on two of its oldest airplanes and no chafing was found, and that the proposed inspection area is already included in an existing maintenance inspection program. For these reasons, the commenter concludes that a 24-month compliance time will provide an equivalent level of safety.

The FAA partially agrees. We do not agree with the commenter's rationale for extending the compliance time. The inspection that the commenter refers to in the existing maintenance program is not a detailed inspection of the wire bundles; it is a general visual inspection of the area that includes the wire bundles. In addition, although the commenter found no chafing damage on its oldest airplanes, age is not the only contributing factor to wire degradation and consequent damaged wire bundles. The wiring on any airplane, regardless

of age, is also susceptible to contributing factors such as improper installation or maintenance, contamination, fluid leakages, inadvertent spillage of liquids, or harmful debris that may be generated during production or maintenance.

In developing an appropriate compliance time for the required inspection, we considered the safety implications, the commenters' request in the original NPRM to extend the compliance time from 15 to 18 months, and normal maintenance schedules for timely accomplishment of the inspection. In consideration of these items, we have determined that 18 months represents an appropriate interval of time allowable wherein the inspection can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained. However, we recognize that some operators' ''C'' check intervals are longer than 18 months because of a low utilization rate. Therefore, we have revised the compliance time specified in paragraph (a) of this AD to ''Within 18 months or 6,000 flight hours after the effective date of this AD, whichever occurs later.''

Request To Exclude the Generator Power Feeder Cables From the Required Actions

One commenter requests that paragraph (a) of the supplemental NPRM be revised to state, ''* * * to detect discrepancies of the stranded wire bundles routed in the notched floor beam area along the ceiling of the forward cargo compartment, from station 368 through 742. * * *'' The commenter states that Revision 2 of the referenced service bulletin describes an inspection area beyond where wiring actually exists, and that it does not differentiate between the stranded wire bundles and the feeder cables. The commenter also states that the feeder cables are well supported within an inch of the stand-offs, are relatively stiff as compared to the stranded wire bundles, and are not part of the issues that prompted the proposed actions on the cables in this area. The commenter further states that there is no benefit gained from attaching plastic sleeving or adding spacers where the cable is routed greater than .125 inch from any stand-off.

We do not agree with the suggestion as worded by the commenter, but do agree that the inspection area specified in paragraph (a) and clearance measurements specified in paragraph (a)(2) of this AD need to be clarified. In conjunction with Boeing, we conducted an inspection of the subject area on certain affected Boeing Model 767 series airplanes at Boeing's production area. The inspection results revealed that power feeder cables W208 and W236 are more rigidly supported in their position than other electrical wire bundles in the forward cargo compartment from stations 368 through 742 and RBLs 40 through 70, routed along the cargo compartment ceiling. As discussed previously, we have reviewed Revision 3 of Boeing Service Bulletin 767–24A0128, dated June 24, 2004, which clarifies the inspection area and clearance measurement, and have revised the final rule accordingly.

Request To Allow Installation of a Tie Cord

One commenter requests that paragraph (a)(2)(ii) of the supplemental NPRM be revised to allow installation of a tie cord instead of a tie strap. The commenter notes that Figure 1, Step 5 of Revision 2 of the referenced service bulletin specifies the use of a strap having part number (P/N) BACS38K2 to secure the harness to the cable mount. The commenter states that the retainer end of the strap can interfere with adjacent harness runs and may cause future damage.

We agree with the commenter's request and observations. We have determined that a tie cord having P/N BMS 13–54 or equivalent may be used as an alternative to a strap having P/N BACS38K2. We have revised paragraph (a)(2) of this AD accordingly.

Request To Fix Service Bulletin Errors

One commenter notes that the inspection area specified in the ''NOTES'' column in the table of Figure 1 of Revision 2 of the service bulletin should be from station ''368,'' not ''638.'' From this comment, we infer that the commenter is requesting us to inform Boeing of the error. We agree. As discussed previously, Boeing has issued and we have reviewed Revision 3 of the service bulletin, which corrects the typographical error. However, no change to the final rule is necessary in this regard, because this AD specifies the correct station.

In the ''NOTES'' column in the table of Figure 1 of Revision 2 of the service bulletin, the same commenter also notes that it refers to Boeing Standard Wiring Practices Manual (BWSPM) sections 20–10–11 and 20–10–12. The commenter states that these sections specify installation criteria, not an inspection procedure, and that BWSPM section 20–60–03, page 201, sub-task 222–003 is a more appropriate reference as it is an inspection criteria directed toward damage identification.

We agree with the commenter that BWSPM sections 20–10–11 and 20–10–12 do not provide inspection procedures. In fact, none of the BSWPM sections describe procedures for inspections. The intent of those sections is to provide instructions how to examine the wires and mounting components to determine installation and damage conditions and to make necessary repairs. Revisions 2 and Revision 3 of the service bulletin are referring to those sections for that purpose only. We also note that BSWPM section 20–60–03, as suggested by the commenter, provides procedures for special protection of electrical connectors. No change to the final rule is necessary in this regard.

Request for Credit for Accomplishment of Earlier Service Bulletin

One commenter requests that the supplemental NPRM be revised to give operators credit for prior accomplishment of Boeing Alert Service Bulletin 767–24A0128, dated May 11, 2000; and Revision 1, dated December 6, 2001; as acceptable means of compliance with the requirements of the supplemental NPRM.

A second commenter requests credit for Revision 1 only. The commenter states that Revision 1 of the service bulletin is more restrictive than Revision 2 with regard to the installation of the subject Teflon protection, clamps, and straps, and therefore, offers an equivalent level of protection to the wire bundles. The commenter also states that the addition of buttock line information to Revision 2, while useful data, does not affect the ability to accomplish the intent of the supplemental NPRM. The commenter believes that all of the subject wire bundles in the inspection area are closely located to each other and clearly visible to maintenance personnel when the inspection area is accessed. Further, the commenter notes that there are no differences between the illustrations in Revisions 1 and 2 showing wire bundle locations subject to the inspection, and therefore, concludes that the areas to be accessed are the same.

We partially agree with the commenters' request. As discussed in the preamble of the supplemental NPRM, Revision 2 of the referenced service bulletin expands the inspection to include areas that were inadvertently omitted from the original service bulletin and Revision 1. Figure 1 of the original issue and Revision 1 incorrectly identifies the inspection area as RBL 70 only; the correct inspection area is between RBL 40 and RBL 70. Therefore, we do not agree with the commenters

that accomplishing the required inspection and applicable corrective actions at RBL 70 only, as specified in the original issue and Revision 1 of the referenced service bulletin, is an acceptable means of compliance with the requirements of this AD. However, as discussed previously, we have added a new paragraph (b) to the final rule to give operators credit for accomplishing the required actions before the effective date of the AD in accordance with those previous releases of the referenced service bulletin, provided that those actions were done on the subject wire bundles from stations 368 through 742 and from RBL 40 through 70.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the supplemental NPRM regarding that material.

Changes to Labor Rate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are about 774 airplanes of the affected design in the worldwide fleet. We estimate that 303 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $39,390, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–22–25 Boeing: Amendment 39–13853. Docket 2000–NM–409–AD.

Applicability: Model 767–200, –300, and –300F series airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin 767–24A0128, Revision 3, dated June 24, 2004.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage of wire bundles in the forward cargo compartment, particularly wires of the fuel quantity indication system (FQIS) installed in that area, which could cause arcing between the FQIS wires and power wires in the damaged wire bundle, lead to transmission of electrical energy into the fuel tank, and result in a potential source of ignition in the fuel tank, accomplish the following:

Inspection and Corrective Actions

(a) Within 18 months or 6,000 flight hours after the effective date of this AD, whichever occurs later, do a one-time detailed inspection for discrepancies of all wire bundles, including power feeder cables W208 and W236, of the electrical system in the forward cargo compartment from stations 368 through 742 and from right buttock lines (RBL) 40 through 70, routed along the ceiling, according to the Accomplishment Instructions of Boeing Alert Service Bulletin 767–24A0128, Revision 3, dated June 24, 2004. Discrepancies include chafing or damage of wire bundles near stand-offs that attach the cargo ceiling liner to the floor beams.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required.''

(1) Before further flight, repair any discrepancy, according to the Accomplishment Instructions of the service bulletin.

(2) Before further flight, examine the clearance between all wire bundles, including the power feeder cables, in the forward cargo compartment and the cargo liner standoffs, and do the applicable

corrective actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD, according to the service bulletin. A tie cord having P/N BMS 13–54 or equivalent may be used as an alternative to a tie strap having part number BACS38K2.

TABLE 1.—CLEARANCE BETWEEN WIRE BUNDLES AND CARGO LINER STANDOFFS

If the clearance between the—	Is—	Then—
(i) Wire bundles and cargo liner standoffs	0.25 inch or more	No further action is required by this AD.
	Between 0.13 and 0.25 inch	Install sleeving and lacing tape
	Less than 0.13 inch	Install sleeving, lacing tape, cable spacers, and straps.
(ii) Power feeder cables and cargo liner standoffs	0.13 inch or more	No further action is required by this AD
	Less than 0.13 inch	Install sleeving, lacing tape, cable spacers, and straps.

Credit for Actions Done Previously

(b) Accomplishment of the inspection and applicable corrective actions before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–24A0128, dated May 11, 2000; Revision 1, dated December 6, 2001; or Revision 2, dated May 23, 2002; is acceptable for compliance with the corresponding actions required by this AD, provided that those actions were done on all wire bundles, including power feeder cables W208 and W236, of the electrical system in the forward cargo compartment from stations 368 through 742 and from RBLs 40 through 70, routed along the ceiling.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 767–24A0128, Revision 3, dated June 24, 2004. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(f) This amendment becomes effective on December 14, 2004.

Issued in Renton, Washington, on October 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24624 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–51–AD; Amendment 39–13857; AD 2004–23–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 65, 90, 99, 100, 200, and 1900 Series Airplanes, and Models 70 and 300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA supersedes Airworthiness Directive (AD) 87–22–01 R1, which applies to certain Raytheon Aircraft Company (Raytheon) 65, 90, 99, 100, 200, and 1900 series airplanes, and Models 70 and 300 airplanes. AD 87–22–01 R1 currently requires you to repetitively inspect the nose landing gear (NLG) fork for cracks. If cracks are found that exceed certain limits, AD 87–22–01 R1 requires you to replace the NLG fork with a serviceable part or an improved NLG fork (Kit No. 101–8030–1 S or Kit No. 114–8015–1 S, as applicable). Incorporating an improved NLG fork kit terminates the repetitive inspection requirements. This AD is the result of FAA's policy (since 1996) to disallow airplane operation when known cracks exist in primary structure. This AD retains the inspection requirements of AD 87–22–01 R1, requires you to incorporate an improved NLG fork kit anytime a crack is found, and adds additional airplanes to the applicability section of this AD. We are issuing this AD to detect and correct cracks in the NLG fork, which could result in reduced structural integrity and inability of the NLG fork to carry design limit and ultimate loads. The reduced residual strength may cause separation failure of the NLG fork, which could result in loss of control of the airplane during take off, landing, and taxi operations.

DATES: This AD becomes effective on December 23, 2004.

As of December 23, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–51–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? Reports of cracks in the nose landing gear (NLG) fork on several Raytheon airplanes caused us to issue AD 87–22–01, Amendment 39–5748, and AD 87–22–01 R1, Amendment 39–6312, against certain Raytheon 65, 90, 99, 100, 200, and 1900 series airplanes, and Models 70 and 300 airplanes.

AD 87–22–01 required you to repetitively inspect the nose landing gear (NLG) fork for cracks. If cracks were

found during any inspection that exceeded certain limits, you were required to replace the NLG fork with a serviceable part.

AD 87–22–01 R1 retained the repetitive inspection and replacement requirements from AD 87–22–01. AD 87–22–01 R1 also introduced incorporating an improved NLG fork (Kit No. 101–8030–1 S or Kit No. 114–8015–1 S, as applicable) as a terminating action for the repetitive inspection requirements of this AD.

What has happened since AD 87–22–01 R1 to initiate this action? As currently written, AD 87–22–01 R1 allows continued flight if cracks are found in the NLG fork that do not exceed certain limits. In 1996, FAA developed policy to not allow airplane operation when known cracks exist in primary structure, unless the ability to sustain limit and ultimate load with these cracks is proven. The NLG fork is considered primary structure, and the FAA has not received any analysis to prove that limit and ultimate loads can be sustained with cracks in this area.

This AD brings the actions of AD 87–22–01 R1 in compliance with FAA policy. Therefore, FAA has determined the crack limits contained in AD 87–22–01 R1 should be eliminated and that AD action should be taken to require immediate incorporation of Kit No. 101–8030–1 S or Kit No. 114–8015–1 S, as applicable, anytime a crack is found.

This policy did not exist when we issued AD 87–22–01 and AD 87–22–01 R1.

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could cause failure of the NLG fork to carry design limit and ultimate loads. Failure of the NLG fork could result in loss of control of the airplane during take off, landing, and taxi operations.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Aircraft Company (Raytheon) 65, 90, 99, 100, 200, and 1900 series airplanes, and Models 70 and 300 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 18, 2004 (12807). The NPRM proposed to require you to repetitively inspect the nose landing gear (NLG) fork for cracks replacing the NLG fork assembly anytime cracks are found.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Clarify the Applicability

What is the commenter's concern? The commenter states the compliance statement in paragraph (e)(1) of the proposed AD is confusing. The compliance statement requires an initial inspection of the nose landing gear (NLG) fork assembly for any signs of cracks on airplanes not previously affected by AD 87–22–01 R1. This inspection is required within the next 200 hours time-in-service (TIS) after the effective date of this AD. However, it is also stated later in the proposed AD that incorporation of Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) is a terminating action to the requirements of the AD and no further action is required. The commenter states that it does not make sense to comply with the initial inspection if you have already done the terminating action.

The commenter states the reason that AD 87–22–01 R1 did not affect most airplanes is because they incorporate Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable).

We infer the commenter wants more clarification to exempt airplanes that incorporate Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) from the applicability of the AD.

What is FAA's response to the concern? We agree that additional clarification may help remove confusion about the need to comply with the initial inspection required in the proposed AD. The proposed AD was written to account for the different set of serial numbers affected by AD 87–22–01 R1 and the proposed AD.

We will add a statement to paragraph (c) and (e)(1) to clarify that airplanes that already incorporate Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) are exempt from this AD.

We will change the final rule AD based on this comment.

Comment Issue No. 2: Replacement Parts Not Available

What is the commenter's concern? The commenter states that in April 2004, Raytheon Aircraft Company (Raytheon) did not have a supply of replacements kits available. The commenter is concerned that a shortage of replacement kits could ground the affected airplanes.

We infer the commenter wants us to confirm the availability and supply of replacements kits before issuing the final rule AD.

What is FAA's response to the concern? We concur with the commenter that a low supply of replacement kits would be a problem. However, on the effective date of this AD, Raytheon has assured us that replacement kits will be available.

We are not changing the final rule AD based on this comment.

Comment Issue No. 3: Revise the Proposed AD

What is the commenter's concern? The commenter states that AD 87–22–01 R1 sufficiently addresses inspecting and monitoring cracks in the nose landing gear (NLG) fork. The commenter states that no failures occurred after using the procedures and crack limitations set in AD 87–22–01 R1. The commenter adds that he has several hundred thousands of hours of experience with numerous affected airplanes with only three or four cracks found in the past 20 years.

The commenter also disagrees with the FAA's policy (since 1996) to disallow airplane operation when known cracks exist in a primary structure. The commenter states the policy is not justified by quantifiable resulting safety improvements and needs to be revised.

The commenter states the proposed AD imposes an unnecessary economic burden upon the owners/operators of the affected airplanes.

The commenter wants AD 87–22–01 R1 to remain in place since it allows a reasonable period of time after discovering a crack to obtain and install a replacement kit.

What is FAA's response to the concern? We do not concur with the commenter. In 1996, FAA developed policy to not allow airplane operation when known cracks exist in primary structure, unless the ability to sustain limit and ultimate load with these cracks is proven. The NLG fork is considered primary structure, and the FAA has not received any analysis to prove that limit and ultimate loads can be sustained with cracks in this area. For this reason, the FAA has determined the crack limits contained in AD 87–22–01 R1 should be eliminated and that AD action should be taken to require immediate incorporation of Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) anytime a crack is found.

We are not changing the final rule AD based on this comment.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for

the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 5,296 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	Not applicable	$130	$130 × 5,296 = $688,480.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of this inspection. We have no way of determining the number of airplanes that may need this repair/replacement:

Labor cost	Parts cost	Total cost per kit
4 workhours × $65 per hour = $260	Kit No. 101–8030–1 S = $4,152	Kit No. 101–8030–1 S: $260 + $4,152 = $4,412.
	Kit No. 114–8015–1 S = $4,210	Kit No. 114–8015–1 S: $260 + $4,210 = $4,470.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–51–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 87–22–01 R1, Amendment 39–6312, and by adding a new AD to read as follows:

2004–23–02 Raytheon Aircraft Company: Amendment 39–13857; Docket No. 2003–CE–51–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on December 23, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 87–22–01 R1, Amendment 39–6312.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that:

(1) Do not incorporate Kit No. 1001–8030–1 S or Kit No. 114–8015–1 S (as applicable); and

(2) Are certificated in any category:

Model	Serial numbers
(i) A65 and A65–8200	LC–240 through LC–335.
(ii) 70	LB–1 through LB–35.
(iii) 65–A80, 65–A80–8800, and 65–B80	LD–151 through LD–511.
(iv) 65–88	LP–1 through LP–26, LP–28, and LP–30 through LP–47.
(v) 65–90, 65–A90, B90, C90, and C90A	LJ–1 through LJ–1190.
(vi) 65–A90–1 (U–21A, JU–21A, U–21G, RU–21A, RU–21D, and RU–21H).	LM–1 through LM–141.
(vii) 65–A90–2 (RU–21B)	LS–1 through LS–3.
(viii) 65–A90–3 (RU–21C)	LT–1 and LT–2.
(ix) 65–A90–4 (RU–21E and RU–21H)	LU–1 through LU–15.

Model	Serial numbers
(x) E90	LW–1 through LW–347.
(xi) F90	LA–2 through LA–236.
(xii) H90 (T–44A)	LL–1 through LL–61.
(xiii) 99, 99A, A99, A99A, B99, and C99	U–1 through U–239.
(xiv) 100 and A100	B–2 through B–93, and B–100 through B–247.
(xv) A100 (U–21F)	B–95 through B–99.
(xvi) A100–1 (U–21J)	BB–3 through BB–5.
(xvii) B100	BE–1 through BE–137.
(xviii) 200 and B200	BB–2, and BB–6 through BB–1314.
(xix) 200C and B200C	BL–1 through BL–72, and BL–124 through BL–131.
(xx) 200CT and B200CT	BN–1 through BN–4.
(xxi) 200T and B200T	BT–1 through BT–33.
(xxii) A200 (C–12A and C–12C)	BC–1 through BC–75 and BD–1 through BD–30.
(xxiii) A200C (UC–12B)	BJ–1 through BJ–66.
(xxiv) A200CT (C–12D, FWC–12D, and C–12F)	BP–1, BP–7 through BP–11, BP–19, and BP–24 through BP–63.
(xxv) A200CT (RC–12D and RC–12H)	GR–1 through GR–19.
(xxvi) A200CT (RC–12G)	FC–1 through FC–3.
(xxvii) A200CT (RC–12K)	FE–1 through FE–9.
(xxviii) B200C (C–12F)	BL–73 through BL–112, BL–118 through BL–123, and BP–64 through BP–71.
(xxix) B200C (UC–12F)	BU–1 through BU–10.
(xxx) B200C (UC–12M)	BV–1 through BV–10.
(xxxi) 300	FA–1 through FA–168, and FF–1 through FF–19.
(xxxii) 1900	UA–1 through UA–3.
(xxxiii) 1900C	UB–1 through UB–74, and UC–1 through UC–78.
(xxxiv) 1900C (C–12J)	UD–1 through UD–6.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified in this AD are intended to detect and correct cracks in the nose landing gear (NLG) fork, which could result in reduced structural integrity and failure of the NLG fork to carry design ultimate load. This failure could result in loss of control of the airplane during take off, landing, and taxi operations.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect, using fluorescent liquid penetrant or magnetic particle method, the nose landing gear (NLG) fork assembly for any signs of cracks unless Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) is incorporated, then no further action is required.	*For airplanes previously affected by AD 87–22–01 R1:* Initially inspect within 200 hours time-in-service (TIS) after the last inspection required by AD 87–22–01 R1. *For airplanes not previously affected by AD 87–22–01 R1:* Initially inspect within the next 200 hours TIS after December 23, 2004 (the effective date of this AD), unless already done.	Follow the instructions in Part II of Raytheon Aircraft Company Mandatory Service Bulletin SB 32–2102, Revision 7, Revised: July, 2003.
(2) If cracks are found during the inspection required in paragraph (e)(1) of this AD, incorporate Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable).	Before further flight after December 23, 2004 (the effective date of this AD).	Follow the instructions in Part III of Raytheon Aircraft Company Mandatory Service Bulletin SB 32–2102, Revision 7, Revised: July, 2003.
(3) If no cracks are found during the inspection required in paragraph (e)(1) of this AD, repetitively inspect until Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) is incorporated. When Kit No. 101–8030–1 S or Kit No. 114–8015–1 S is incorporated, no further action is required.	Repetitively inspect at intervals not to exceed 200 hours TIS after the initial inspection required in paragraph (e)(1) of this AD. Incorporate Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) prior to further flight after any inspection in which cracks are found.	Follow the instructions in Part III of Raytheon Aircraft Company Mandatory Service Bulletin SB 32–2102, Revision 7, Revised: July, 2003.
(4) Incorporating Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) is the terminating action for the repetitive inspection requirements specified in paragraph (e)(3) of this AD.	Kit No. 101–8030–1 S or Kit No. 114–8015–1 S (as applicable) can be incorporated at any time. When incorporated, no further action is required.	Follow Raytheon Aircraft Company Mandatory Service Bulletin SB 32–2102, Revision 7, Revised: July, 2003.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Steven E. Potter, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Raytheon Aircraft Company Mandatory Service Bulletin SB 32–2102, Revision 7, Revised: July, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on November 1, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24718 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18572; Directorate Identifier 2003–NM–72–AD; Amendment 39–13848; AD 2004–22–20]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–11 and MD–11F airplanes. This AD requires replacement of low base terminal boards, related investigative action, and corrective actions if necessary. This AD is prompted by arcing between a power feeder cable and terminal board support bracket. We are issuing this AD to prevent arcing damage to the power feeder cables, terminal boards, and adjacent structure, which could result in smoke and/or fire in the cabin.

DATES: This AD becomes effective December 14, 2004.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of December 14, 2004.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210. *Plain language information:* Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain McDonnell Douglas Model MD–11 and MD–11F airplanes. That action, published in the **Federal Register** on July 13, 2004 (69 FR 41992), proposed to require replacement of low base terminal boards, related investigative actions, and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 152 airplanes of the affected design in the worldwide fleet. This AD will affect about 52 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Airplanes identified in the service bulletin as—	Work hours	Average labor rate per hour	Parts cost	Cost per airplane (depending on the airplane configuration)
Group 1	3	$65	$45–$384	$240–$579
Groups 2 and 5	1	65	45–384	110–449
Groups 3, 4, and 6	2	65	45–384	175–514

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for

a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2004–22–20 McDonnell Douglas: Amendment 39–13848. Docket No. FAA–2004–18572; Directorate Identifier 2003–NM–72–AD.

Effective Date

(a) This AD becomes effective December 14, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–11 and MD–11F airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A175, Revision 01, dated April 25, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by arcing between a power feeder cable and terminal board support bracket. We are issuing this AD to prevent arcing damage to the power feeder cables, terminal boards, and adjacent structure, which could result in smoke and/or fire in the cabin.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–24A175, Revision 01, dated April 25, 2003, including Boeing Information Notices MD11–24A175 IN 01, dated November 6, 2003, and MD11–24A175 IN 02, dated December 17, 2003.

Replacement, Related Investigative Action, and Corrective Actions

(g) Within 18 months after the effective date of this AD, replace low base terminal boards with higher base terminal boards in accordance with the applicable figure in the service bulletin, and do all related investigative action/applicable corrective actions by accomplishing all the actions in the service bulletin, except as provided by paragraph (h) of this AD. Any related investigative action/applicable corrective actions must be done before further flight.

(h) If, during the corrective actions required by paragraph (g) of this AD, the type of structural material that has been damaged is not covered in the structural repair manual, before further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Parts Installation

(i) As of the effective date of this AD, no person may install a terminal board, as listed in section 1.A.2. ''Spares Affected'' of the Planning Information of the service bulletin, on any airplane.

No Reporting

(j) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(l) You must use McDonnell Douglas Alert Service Bulletin MD11–24A175, Revision 01, dated April 25, 2003, including Boeing Information Notice MD11–24A175 IN 01, dated November 6, 2003, and Boeing Information Notice MD11–24A175 IN 02, dated December 17, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on October 25, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24623 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18573; Directorate Identifier 2003–NM–71–AD; Amendment 39–13847; AD 2004–22–19]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–11 airplanes. This AD requires revising the cable connection stackups for mid-cabin terminal strips, replacing the terminal strips, and removing a nameplate, as applicable. This AD also requires an inspection for arcing damage in the mid-cabin area, and corrective actions if necessary. This AD is prompted by an incident in which arcing occurred between the power feeder cables and support bracket of the terminal strips. We are issuing this AD to prevent arcing damage to the terminal strips and damage to the adjacent structure, which could result in smoke and/or fire in the mid-cabin compartment.

DATES: This AD becomes effective December 14, 2004.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of December 14, 2004.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on

the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain McDonnell Douglas Model MD–11 airplanes. That action, published in the **Federal Register** on July 13, 2004 (69 FR 41990), proposed to require revising the cable connection stackups for mid-cabin terminal strips, replacing the terminal strips, and removing a nameplate, as applicable. That action also proposed to require an inspection for arcing damage in the mid-cabin area, and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 23 airplanes of U.S. registry and 90 airplanes worldwide. The required actions will take between 5 and 6 work hours per airplane depending on the airplane configuration, at an average labor rate of $65 per work hour. Required parts will cost between $673 and $975 depending on the airplane configuration. The airplane configuration group requiring the fewest number of work hours requires parts that cost approximately $710. Based on these figures, the estimated cost of the AD for U.S. operators is between $1,035 and $1,365 per airplane depending on the airplane configuration.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2004–22–19 McDonnell Douglas: Amendment 39–13847. Docket No. FAA–2004–18573; Directorate Identifier 2003–NM–71–AD.

Effective Date

(a) This AD becomes effective December 14, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–11 series airplanes, as listed in paragraph 1.A.1. of McDonnell Douglas Alert Service Bulletin MD11–24A176, dated May 27, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by an incident in which arcing occurred between the power feeder cables and support bracket of the terminal strips. We are issuing this AD to prevent arcing damage to the terminal strips and damage to the adjacent structure, which could result in smoke and/or fire in the mid-cabin compartment.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Revise Wire Connection Stackups; Remove Nameplate, as Applicable; and Inspect for Damage

(f) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (f)(1) and (f)(2) of this AD, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–24A176, dated May 27, 2003. Although the service bulletin specifies to submit information to the manufacturer in paragraph 4, ''Appendix,'' this AD does not include that requirement.

(1) Revise the wire connection stackups, replace the terminal strips for the power feeder cables, and remove nameplates, as applicable, at the affected mid-cabin locations.

(2) Do a general visual inspection to detect arcing damage of the surrounding structure, adjacent system component, and electrical cables in the mid-cabin area.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Action If Necessary

(g) If any damage is detected during the inspection required by paragraph (f) of this AD, before further flight, repair damage or replace the damaged part with a new part, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–24A176, dated May 27, 2003. If the type of structural material that has been damaged is not covered in the Structural Repair Manual, before further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) You must use McDonnell Douglas Alert Service Bulletin MD11–24A176, dated May 27, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For

copies of the service information, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on October 25, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 04–24622 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–32–AD; Amendment 39–13846; AD 2004–22–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that requires an inspection of the auto throttle servo (ATS) assembly and corrective actions if necessary. The actions specified by this AD are intended to prevent electrical shorting of the brake coils of the ATS, which could result in smoke in the cockpit and/or passenger cabin. This action is intended to address the identified unsafe condition.

DATES: Effective December 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 13, 2004 (69 FR 41985). That action proposed to require an inspection of the auto throttle servo assembly and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Cost Impact

There are about 195 McDonnell Douglas Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. We estimate that 62 airplanes of U.S. registry will be affected by this AD, that it will take about 1 work hour per airplane to accomplish the inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $4,030, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–22–18 McDonnell Douglas: Amendment 39–13846. Docket 2000–NM–32–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Service Bulletin MD11–22–026, dated December 19, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical shorting of the brake coils of the auto throttle servo (ATS), which could result in smoke in the cockpit and/or passenger cabin, accomplish the following:

Inspect ATS

(a) Within 36 months after the effective date of this AD, do an inspection to determine the part number (P/N) of the ATS assembly of the servo assembly of the TCM, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–22–026, dated December 19, 2003.

Corrective Actions

(b) Before further flight after doing the inspection required by paragraph (a) of this AD, do the applicable corrective action(s) specified in ''Table-Corrective Actions,'' in accordance with Boeing Service Bulletin MD11–22–026, dated December 19, 2003.

TABLE.—CORRECTIVE ACTIONS

If—	Then—
(1) P/N 4059004–903 is installed	Reidentify the TCM assembly.
(2) P/N 4059004–903 is not installed	Replace the existing ATS assembly of the TCM assembly with a new ATS assembly, and reidentify the TCM assembly; or return TCM assembly to Boeing for modification and reidentification.

Parts Installation

(c) As of the effective date of this AD, no person shall install a thrust control module assembly having part number ABH7760–1, ABH7760–501, ABH7760–503, SR11761001–3, SR11761001–5, SR11761001–7, SR11270022–3, SR11761001–9, SR11270022–5, or SR11761001–11, on any airplane.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin MD11–22–026, dated December 19, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(f) This amendment becomes effective on December 14, 2004.

Issued in Renton, Washington, on October 25, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24621 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–54–AD; Amendment 39–13845; AD 2004–22–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F airplanes, that requires an inspection of the connector cables for signs of arcing and/or signs of moisture penetration into the overhead decoder units (ODU), and replacement of the affected ODU(s) with a new ODU, if necessary. This action also requires modification and reidentification of the cable assemblies and the connect cable assemblies at shipside power to the ODU, ODU to ODU, and adjacent bag racks; and replacing certain connectors of the ODU and shipside power cable assemblies. The actions specified by this AD are intended to prevent moisture from entering through the rear of the connector of the ODUs located in the overhead baggage stowage racks, which could result in a short, damage to the connector pins, and consequent smoke and/or fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Effective December 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 13, 2004 (69 FR 41987). That action proposed to require an inspection of the connector cables for signs of arcing and/or signs of moisture penetration into the overhead decoder units (ODU), and replacement of the affected ODU(s) with a new ODU, if necessary. That action also proposed to require modification and

reidentification of the cable assemblies and the connect cable assemblies at shipside power to the ODU, ODU to ODU, and adjacent bag racks; and replacing certain connectors of the ODU and shipside power cable assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 114 airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately between 295 and 2,056 work hours per airplane (*i.e.*, 2 work hours per ODU and shipside connector; the number of ODUs and shipside connectors per airplane will vary between 59 and 1,028 depending on the airplane's configuration) to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately between $2,264 and $130,864 per airplane (depending on the airplane configuration). Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $21,439 and $264,504 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–22–17 McDonnell Douglas: Amendment 39–13845. Docket 2001–NM–54–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–33A065, Revision 02, dated April 1, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent moisture from entering through the rear of the connector of the overhead decoder units (ODU) located in the overhead baggage stowage racks, which could result in a short, damage to the connector pins, and consequent smoke and/or fire in the cabin, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means Boeing Alert Service Bulletin MD11–33A065, Revision 02, dated April 1, 2003.

Part 1: Cable Assemblies of the ODU

(b) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) through (b)(4) of Table 1 of this AD, as applicable, and any applicable corrective actions by doing all actions in Part 1 of the Work Instructions of the service bulletin. Do the actions per the service bulletin. Do any applicable corrective actions before further flight.

TABLE 1.—CABLE ASSEMBLIES OF THE ODUS

For Airplanes Identified in the Service Bulletin as—	Actions—
(1) Groups 1 through 69	Do a general visual inspection of the P1 connector end of all AWP9604 cable assemblies of the ODUs to determine if SK2464–15 connectors are present.
(2) Groups 1 through 69	Replace the connector ends on the applicable cable assemblies of the ODUs with new connector ends.
(3) Groups 1 through 72	Do general visual inspection of the cable connectors for signs of arcing or signs of moisture penetration into the ODUs.
(4) Groups 70 through 72	Replace the connectors of the applicable cable assemblies of the ODUs with new connectors.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Part 2: Shipside Cable Assemblies

(c) For Groups 1 through 69 identified in the service bulletin: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (c)(1) through (c)(3) of this AD, and any applicable corrective action by doing all actions in paragraphs 1., and 3. through 10., as applicable, of Part 2 of the Work Instructions of the service bulletin. Do the actions per the service bulletin. Do any applicable corrective actions before further flight.

(1) Do a general visual inspection of the P1 connector end of the jumper cables of the centerline AWP9606 shipside cable assemblies to determine if SK2464–9 connectors are present.

(2) Replace the P1 connector ends on the applicable shipside cable assemblies with new connector ends.

(3) Replace the connectors of the applicable shipside cable assemblies with new connectors.

Differences Between AD and Referenced Service Bulletin

(d) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(e) Although the service bulletin describes the procedure for a general visual inspection of the connector cables of the shipside cable assemblies for signs of arcing or signs of moisture penetration for certain airplanes, this AD does not require that inspection.

Note 2: Where there are differences between the AD and the service bulletin, the AD prevails.

Parts Installation

(f) As of the effective date of this AD, no person shall install a cable assembly having a part number in the ''Existing Part Number'' column of the applicable table specified in paragraph 2.C.3, ''Parts Necessary for Each Airplanes'' of the service bulletin, on any airplane.

Alternative Methods of Compliance (AMOC)

(g) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve AMOCs for this AD.

Incorporation by Reference

(h) The action shall be done in accordance with Boeing Alert Service Bulletin MD11–33A065, excluding Appendix, Revision 02, dated April 1, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(i) This amendment becomes effective on December 14, 2004.

Issued in Renton, Washington, on October 25, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24620 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–106–AD; Amendment 39–13855; AD 2004–22–27]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, that requires a general visual inspection for sealant at the interface between the diagonal brace fitting and the aft bulkhead and at the four bolts common to the interface. It also requires applying sealant if none is present or if it is not continuous. This action is necessary to prevent flammable fluid in the upper or rear pylon areas from leaking past unsealed areas and onto a hot engine nozzle, which could result in ignition of the fluid, causing an undetected and uncontrollable fire to spread into the engine struts. This action is intended to address the identified unsafe condition.

DATES: Effective December 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6504; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes was published in the **Federal Register** on May 3, 2004 (69 FR 24101). That action proposed to require a general visual inspection for sealant at the interface between the diagonal brace fitting and the aft bulkhead and at the four bolts common to the interface. It also proposed to require applying sealant if none is present or if it is not continuous.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Extend Compliance Time

One commenter requests that the FAA extend the compliance time for the general visual inspection from 18 months or 3,500 flight cycles, whichever occurs first, to 24 months or 4,500 flight cycles, whichever occurs first. The commenter states that access is common for the proposed inspection and Boeing Maintenance Planning Document (MPD) tasks 54–040–1 through 54–050–02, dated February 10, 2004, and that it would be more cost efficient if the commenter could perform the inspection and MPD tasks during the same maintenance visit, every 24 months.

We do not agree with the request to extend the compliance time. The commenter provided no justification for the change other than for the convenience of its maintenance program. In developing an appropriate compliance time for this action, we considered the recommendation of the manufacturer, urgency associated with the subject unsafe condition, and the practical aspect of accomplishing the required inspection within a period of time that corresponds to the normal scheduled maintenance for most affected operators. However, under the provisions of paragraph (c) of the final

rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Clarification of Changes to the Final Rule

We have revised paragraph (a)(2) of the final rule and added new paragraph (a)(3) to eliminate any possible ambiguity created by use of the term ''and/or'' in the proposed AD.

Cost Impact

There are approximately 946 airplanes of the affected design in the worldwide fleet. The FAA estimates that 436 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $56,680, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this AD. As a result, the costs attributable to this AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–22–27 Boeing: Amendment 39–13855. Docket 2003–NM–106–AD.

Applicability: Model 737–600, –700, –700C, –800, and –900 series airplanes, line numbers 1 through 946 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent flammable fluid in the upper or rear pylon areas from leaking past unsealed areas and onto a hot engine nozzle, which could result in ignition of the fluid, causing an undetected and uncontrollable fire to spread into the engine struts; accomplish the following:

Inspection of Sealant

(a) Within 18 months or 3,500 flight cycles after the effective date of this AD, whichever occurs first: Perform a general visual inspection for sealant at the interface of the diagonal brace fitting and the aft bulkhead and at the four bolts common to the interface, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1039, Revision 1, dated October 10, 2002.

(1) If the findings of the general visual inspection are as described in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, then no further action is required by this AD.

(i) The seal is continuous or there is evidence of fay seal sqeeze out present.

(ii) The bolts have evidence of sealant squeeze out or a cap seal exists.

Application of Fillet Seal

(2) The seal is not continuous and there is no evidence of fay seal squeeze out present, before further flight, fillet seal around the interface of the diagonal brace fitting and the aft bulkhead, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1039, Revision 1, dated October 10, 2002.

Application of Cap Seal

(3) If the bolts do not have evidence of sealant squeeze out and no cap seal exists, before further flight, cap seal the four bolts common to the interface, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1039, Revision 1, dated October 10, 2002.

Credit for Actions Accomplished per Previous Service Bulletin

(b) Actions accomplished before the effective date of this AD per Boeing Special Attention Service Bulletin 737–54–1039, dated June 13, 2002, are acceptable for compliance with the corresponding actions of paragraph (a) of this AD.

Alternative Methods of Compliance (AMOC)

(c) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve AMOCs for this AD.

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Special Attention Service Bulletin 737–54–1039, Revision 1, dated October 10, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Effective Date

(e) This amendment becomes effective on December 14, 2004.

Issued in Renton, Washington, on October 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24626 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18603; Directorate Identifier 2003–NM–14–AD; Amendment 39–13850; AD 2004–22–22]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes; and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes; and Model C4–605R Variant F Airplanes (Collectively Called A300–600)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A310 series airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model C4–605R Variant F airplanes (collectively called A300–600). That AD currently requires modifying the ram air turbine (RAT) by replacing the ejection jack. This new AD requires a one-time inspection of the RAT ejection jack to determine the part number, and further investigative and corrective actions if necessary. This AD is prompted by the discovery of a rupture in the housing of one of the RAT ejection jacks installed as specified in the existing AD. We are issuing this AD to prevent rupture of the housing of the RAT ejection jack due to overpressure in the jack caused by overfilling the hydraulic fluid, and consequent failure of the RAT ejection jack. Failure of the ejection jack could result in a lack of hydraulic pressure or electrical power in an emergency.

DATES: This AD becomes effective December 14, 2004.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of December 14, 2004.

The incorporation by reference of certain other publications listed in the AD was approved previously by the Director of the Federal Register on August 6, 2001 (66 FR 34798, July 2, 2001).

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical information: Dan Rodina, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

Examining the Docket

The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR Part 39) with an AD to supersede AD 2001–13–16, amendment 39–12297, (66 FR 34798, July 2, 2001). The existing AD applies to certain Airbus Model A310 series airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model C4–605R Variant F airplanes (collectively called A300–600). The proposed AD was published in the **Federal Register** on July 15, 2004 (69 FR 42363), to require a one-time inspection of the RAT ejection jack to determine the part number, and further investigative and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Explanation of Change to Applicability

We have revised the applicability of the AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

AD 2001–13–16 affects about 117 airplanes of U.S. registry. The actions that are currently required by AD 2001–13–16 and retained in this AD take about 6 work hours per airplane, at an average labor rate of $65 per work hour. There is no charge for required parts. Based on these figures, the estimated cost of the currently required actions for U.S. operators is $45,630, or $390 per airplane.

This AD will affect approximately 149 airplanes of U.S. registry. The new inspection will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the new actions specified in this AD for U.S. operators is $9,685, or $65 per airplane.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2004–22–22 Airbus: Amendment 39–13850. Docket No. FAA–2004–18603; Directorate Identifier 2003–NM–14–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2004.

Affected ADs

(b) This AD supersedes AD 2001–13–16, amendment 39–12297 (66 FR 34798, July 2, 2001).

Applicability

(c) This AD applies to Airbus Model A310 series airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model C4–605R Variant F airplanes (collectively called A300–600); certificated in any category; as listed in Airbus Service Bulletin A300–29–6050, Revision 02, dated April 16, 2003; or A310–29–2088, Revision 01, dated February 3, 2003.

Unsafe Condition

(d) This AD was prompted by the discovery of a rupture in the housing of one of the ram air turbine (RAT) ejection jacks installed as specified in the existing AD. We are issuing this AD to prevent rupture of the housing of the RAT ejection jack due to overpressure in the jack caused by overfilling the hydraulic fluid, and consequent failure of the RAT ejection jack. Failure of the ejection jack could result in a lack of hydraulic pressure or electrical power in an emergency.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Requirements of AD 2001–13–16:

Modification

(f) For airplanes on which Airbus Modification 12259 has not been accomplished: Within 34 months after August 6, 2001 (the effective date of AD 2001–13–16, amendment 39–12297), modify the RAT per Airbus Service Bulletin A310–29–2086, Revision 01 (for Model A310 series airplanes), or A300–29–6048, Revision 01 (for Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model C4–605R Variant F airplanes (collectively called A300–600)), both dated July 12, 2000, as applicable.

Note 1: Modification of the RAT accomplished prior to August 6, 2001, in accordance with Airbus Service Bulletin A310–29–2086 or A300–29–6048, both dated April 6, 2000, as applicable, is considered acceptable for compliance with the action specified in paragraph (f) of this AD.

Parts Installation

(g) As of August 6, 2001, no person may install on any airplane an ejection jack, part number 730820, unless it has been modified per paragraph (f) of this AD.

Note 2: Airbus Service Bulletin A310–29–2086 and A300–29–6048, both Revision 01, refer to Hamilton Sundstrand Service Bulletin No. ERPS03/04EJ–29–1, as an additional source of service information for accomplishment of the modification of the RAT and testing of the modified RAT.

New Requirements of This AD:

Inspection

(h) Within 2,500 flight hours after the effective date of this AD: Inspect the RAT ejection jack to determine the part number (P/N), in accordance with the Accomplishment Instructions of the applicable Airbus service bulletin listed in Table 1 of this AD. If the P/N can be determined and is neither 772652 nor 772654, no further action is required by this paragraph.

TABLE 1.—SERVICE INFORMATION

For this airplane model—	Airbus Service Bulletin—
A300 B4–600, B4–600R, and F4–600R series airplanes; and Model C4–605R Variant F airplanes (collectively called A300–600).	A300–29–6050, Revision 02, dated April 16, 2003.
A310 series airplanes	A310–29–2088, Revision 01, dated February 3, 2003.

Note 3: Airbus Service Bulletins A300–29–6050 and A310–29–2088 refer to Hamilton Sundstrand Service Bulletin ERPS03/04EJ–29–2, dated May 8, 2002, as an additional source of service information for identifying subject RAT ejection jacks and performing the applicable related investigative and corrective actions.

Related Investigative and Corrective Actions (If Necessary)

(i) If the P/N on the RAT ejection jack is either 772652 or 772654, or if the P/N cannot be determined: Before further flight, accomplish all applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of the applicable Airbus service bulletin listed in Table 1 of this AD.

Actions Accomplished Previously

(j) Inspections and related investigative and corrective actions done before the effective date of this AD in accordance with Airbus Service Bulletin A300–29–6050 (for Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model C4–605R Variant F airplanes (collectively called A300–600)) or A310–29–2088 (for Model A310 series airplanes), both dated July 23, 2002, as applicable, are acceptable for compliance with the corresponding actions required by paragraphs (h) and (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(l) French airworthiness directive 2002–638(B), dated December 24, 2002, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use the service information that is specified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise:

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Airbus Service Bulletin A300–29–6048	01	July 12, 2000.
Airbus Service Bulletin A300–29–6050, excluding Appendix 01	02	April 16, 2003.
Airbus Service Bulletin A310–29–2086	01	July 12, 2000.
Airbus Service Bulletin A310–29–2088, excluding Appendix 01	01	February 3, 2003.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300–29–6050, Revision 02, excluding Appendix 01, dated April 16, 2003; and Airbus Service Bulletin A310–29–2088, Revision 01, excluding Appendix 01, dated February 3, 2003; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A300–29–6048, Revision 01, dated July 12, 2000; and Airbus Service Bulletin A310–29–2086, Revision 01, dated July 12, 2000, was approved previously by the Director of the Federal Register as of August 6, 2001 (66 FR 34798, July 2, 2001).

(3) For copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on October 20, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24628 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–11–AD; Amendment 39–13851; AD 2004–22–23]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, that requires a one-time inspection of the shafts of the main landing gear (MLG) side-brace fittings to detect corrosion, and the forward and aft bushings in the left-hand and right-hand MLG side-brace fittings to detect discrepancies. This AD also requires corrective and related actions if necessary. This action is necessary to prevent fractures of the MLG side-brace fitting shafts, and possible collapse of the MLG. This action is intended to address the identified unsafe condition.

DATES: Effective December 14, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of December 14, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, PO Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7312; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes was published in the **Federal Register** on June 14, 2004 (69 FR 32924). That action proposed to require a one-time inspection of the shafts of the main landing gear (MLG) side-brace fittings to detect corrosion, and the forward and aft bushings in the left-hand and right-hand MLG side-brace fittings to detect discrepancies. That action also proposed to require corrective and related actions if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request for Credit for Actions Done per the Original Issue of the Service Bulletin

One commenter requests that actions done per the original issue of Bombardier Service Bulletin 601R–57–036 be considered acceptable for compliance with the corresponding actions in the proposed AD. The commenter notes that Revisions A and B of the service bulletin are mentioned in paragraph (c) of the proposed AD as being acceptable for compliance with the corresponding actions but the paragraph does not state that actions done per the original issue are considered acceptable for compliance with the corresponding actions.

The FAA agrees that actions done per the original issue of the service bulletin are considered acceptable for compliance with the corresponding actions of the final rule. Revision C of the service bulletin, cited as the appropriate source of service information for the final rule, specifies that no additional action is needed for airplanes on which actions were done per previous issues of the service bulletin. We have revised paragraph (c) of the final rule accordingly.

Request To Remove Reference to Functional Test

The same commenter requests that references to the functional test in the proposed AD need not be specified. The commenter states that the ''Explanation of Requirements of Proposed AD'' paragraph of the proposed AD specifies that the Canadian airworthiness directive CF–2002–41, dated September 20, 2002, does not include the

requirement for a functional test of the MLG system, and that the functional test is included in Revision C of the service bulletin. The commenter contends that someone may then believe that the functional test is not a part of the original issue, Revision A, or Revision B of the service bulletin. The commenter notes that the functional test is included in the work instructions of all issues of the service bulletin.

We partially agree with the commenter's request. We acknowledge that the functional test is included in all revisions of the service bulletin. We referenced only Revision C of the service bulletin in the preamble of the proposed AD because it is cited as the appropriate source of service information. Our intent was to explain a ''difference'' between the Canadian airworthiness directive and the proposed AD in that the Canadian airworthiness directive does not specifically call out the functional test. We confirmed with Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, that operators are expected to do the functional test and that this AD will call attention to accomplishing the functional test. We do not find that any further clarification is needed. Since the references to the functional test are in certain parts of the preamble of the proposed AD that are not restated in the final rule, we have made no change to the final rule regarding this issue.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This AD is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the corrosion of the shafts of the MLG side-brace fittings, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Cost Impact

We estimate that 462 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required inspections and functional test, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the actions required by this AD on U.S. operators is estimated to be $150,150, or $325 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–22–23 Bombardier, Inc. (Formerly Canadair): Amendment 39–13851. Docket 2003–NM–11–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7651 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fractures of the main landing gear (MLG) side-brace fitting shafts, and possible collapse of the MLG, accomplish the following:

Inspections, Corrective Actions, and Related Actions

(a) Within 20 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first: Do a general visual inspection of the shafts of the side-brace fittings of the MLG for corrosion, and of the forward and aft bushings in the left-hand and right-hand MLG side-brace fittings for discrepancies (gouges, scores, corrosion, or other damage); and any applicable corrective and related actions. Do all of the actions in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–57–036, Revision ''C'', including Appendix A, dated January 30, 2003. Do any applicable corrective and related actions before further flight. Where the service bulletin specifies to contact the manufacturer for certain replacement instructions: Before further flight, replace per a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Reporting

(b) Submit a report of any corrosion of the shafts of the side-brace fittings of the MLG found during the inspections required by paragraph (a) of this AD to the Bombardier Technical Help Desk at fax number (514) 833–8501. Submit the report at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. Submission of the Field-Report Data Sheet in Appendix A of the service bulletin is an acceptable method for complying with this requirement. Include the inspection results (including the percentage of the

corrosion), a digital photo of the shafts (if available), the location (zone) in which the corrosion is found, the serial number of the airplane, the name of the inspector, the service bulletin number, and the date of the inspection. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspections are done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspections were done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Actions Accomplished per Previous Issue of Service Bulletin

(c) Actions accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 601R–57–036, including Appendix A, dated April 30, 2002; Revision ''A'', including Appendix A, dated May 17, 2002; or Revision ''B'', including Appendix A, dated July 4, 2002; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, New York ACO, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Bombardier Service Bulletin 601R–57–036, Revision ''C'', including Appendix A, dated January 30, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–41, dated September 20, 2002.

Effective Date

(f) This amendment becomes effective on December 14, 2004.

Issued in Renton, Washington, on October 20, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24629 Filed 11–8–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–11–AD; Amendment 39–13856; AD 2004–22–28]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model B100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon) Model B100 airplanes. This AD requires you to drill holes in the hot lip tube ''B'' nuts, tighten the ''B'' nuts to specified torque ranges, and secure the ''B'' nuts with safety wire. This AD is the result of reports of loose ''B'' nuts on the engine inlet that may loosen and permit a leak in the engine inlet anti-ice system. We are issuing this AD to detect and correct loose ''B'' nuts on the engine inlet, which could result in failure of the engine inlet anti-ice system and consequent ice buildup. This failure and ice buildup could lead to an engine's ingestion of ice with loss of engine power or loss of engine.

DATES: This AD becomes effective on December 27, 2004.

As of December 27, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–11–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received six reports of loose ''B'' nuts on the Raytheon Model B100 engine inlet anti-ice system found during routine maintenance. These loose ''B'' nuts may permit a leak in the engine inlet anti-ice system that would result in failure of the system with consequent ice buildup on the engine inlet.

What is the potential impact if FAA took no action? Failure of the engine inlet anti-ice system and consequent ice buildup could lead to an engine's ingestion of ice with loss of engine power or loss of engine.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model B100 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 26, 2004 (69 FR 29910). The NPRM proposed to require you to drill holes in the hot lip tube ''B'' nuts, tighten the ''B'' nuts to specified torque ranges, and secure the ''B'' nuts with safety wire.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special

flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 96 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do the inspection and modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $65 per hour = $260	Not Applicable	$260	$24,960

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2004–CE–11–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2004–22–28 Raytheon Aircraft Company: Amendment 39–13856; Docket No. 2004–CE–11–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on December 27, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model B100 airplanes, serial numbers BE–1 through BE–136, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of loose ''B'' nuts on the engine inlet that may loosen and permit a leak in the engine inlet anti-ice system. The actions specified in this AD are intended to detect and correct loose ''B'' nuts on the engine inlet, which could result in failure of the engine inlet anti-ice system and consequent ice buildup. This failure and ice buildup could lead to an engine's ingestion of ice with loss of engine power or loss of engine.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Drill a 0.035-inch hole in each of the hot tube ''B'' nuts (part number (P/N) AN818–6D and AN818–8D).	Within the next 150 hours time-in-service (TIS) or 6 calendar months after December 27, 2004 (the effective date of this AD), whichever occurs first.	Follow Raytheon Aircraft Mandatory Service Bulletin No. SB 30–3143, dated September 2001. The applicable airplane maintenance manual also addresses this issue.
(2) Tighten the hot lip tube ''B'' nuts to a specified torque range: (i) Tighten hot lip tube ''B'' nuts P/N AN818–6D to a torque range of 75 to 125 inch-pounds. (ii) Tighten hot lip tube ''B'' nuts P/N AN818–8D to a torque range of 150 to 250 inch-pounds.	Before further flight after the actions required by paragraph (e)(1) of the AD.	Follow Raytheon Aircraft Mandatory Service Bulletin No. SB 30–3143, dated September 2001. The applicable airplane maintenance manual also addresses this issue.
(3) Secure the hot lip tube ''B'' nuts (P/N AN818–6D and AN818–8D) with safety wire.	Before further flight after the actions required by paragraph (e)(2) of this AD.	Follow Raytheon Aircraft Mandatory Service Bulletin No. SB 30–3143, dated September 2001. The applicable airplane maintenance manual also addresses this issue.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Jeff Pretz, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Raytheon Aircraft Mandatory Service Bulletin No. SB 30–3143, dated September 2001. The Director of the Federal Register approved the incorporation by reference of

this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on October 27, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24630 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–139]

Drawbridge Operation Regulations: Fort Point Channel, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Northern Avenue Bridge, mile 0.1, across Fort Point Channel, at Boston, Massachusetts. This temporary deviation allows the bridge to remain in the closed position from December 1, 2004, through December 31, 2004. This temporary deviation is necessary to facilitate mechanical repairs at the bridge.

DATES: This deviation is effective from December 1, 2004, through December 31, 2004.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Northern Avenue Bridge has a vertical clearance of 7 feet at mean high water and 17 feet at mean low water in the closed position. The existing regulations are listed at 33 CFR 117.599.

The bridge owner, the City of Boston, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary mechanical repairs, the replacement of the bridge operating gears, at the bridge. The bridge cannot open during the prosecution of these mechanical repairs.

Under this temporary deviation the bridge may remain in the closed position from December 1, 2004, through December 31, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.35 and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: October 26, 2004.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–24970 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–132]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain closed from 6 a.m. to midnight on the following days: November 10 through November 12; November 17 through November 19; November 22 through November 24; and December 1 through December 3, 2004. The temporary deviation is necessary to facilitate bridge maintenance.

DATES: This deviation is effective from November 10, 2004, through December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

The owner of the bridge, New York City Department of Transportation (NYCDOT), requested a temporary deviation from the drawbridge operation regulations to facilitate rehabilitation repairs at the bridge. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the NYCDOT Metropolitan Avenue Bridge may remain in the closed position from 6 a.m. through midnight on the following days: November 10 through November 12; November 17 through November 19; November 22 through November 24; and December 1 through December 3, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: October 30, 2004.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 04–24971 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R03–OAR–2004–WV–0001; FRL–7836–5]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Determination of Attainment and Redesignation of the City of Weirton PM_{10} Nonattainment Area to Attainment and Approval of the Maintenance Plan; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correcting amendment.

SUMMARY: This document corrects an omission in the preamble language of a direct final rule pertaining to a determination of attainment and redesignation of the City of Weirton PM_{10} Nonattainment Area to attainment and approval of the maintenance plan submitted by the State of West Virginia.

DATES: This document will be effective on December 27, 2004, unless EPA receives adverse written comment by November 26, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. Please see EPA's direct final rule published on October 27, 2004 (69 FR 62591), for instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever

''we,'' or ''our'' are used we mean EPA. On October 27, 2004, (69 FR 62591), we published a final rulemaking action announcing approval of a determination of attainment and redesignation of the City of Weirton PM_{10} Nonattainment our Area (the Weirton area) to attainment and approval of the maintenance plan for the area. In the preamble of this document, we inadvertently omitted language explaining why PM_{10} motor vehicle emissions budgets, for purposes of transportation conformity, not required to be part of the maintenance plan for the area. Our intent was to explain that the ambient impact of PM_{10} emissions from onroad motor vehicles was not and is not significant as it has been and continues to be less than five percent of the total PM_{10} ambient concentrations in the area. Stationary (point) source emissions are responsible for the remaining impacts. The May 24, 2004 submittal from West Virginia requesting redesignation and approval of the maintenance plan (which is in the docket for this final rule) includes a letter from EPA to the State of West Virginia, dated April 26, 1995. In that letter, EPA agreed that because the ambient impact of PM_{10} emissions from onroad motor vehicles was less than five percent of the total PM_{10} ambient concentrations in the area, the impact of PM_{10} emissions from onroad motor vehicles was not responsible for nonattainment. That letter also stated that for purposes of transportation conformity no additional quantitative analyses for transportation-related PM_{10} impacts were required for the area. The May 24, 2004 submittal from West Virginia also includes emission inventory data and information regarding the area's declining population indicating a decrease in on road mobile emissions.

Although the docket for this final rule includes documentation that the ambient impact of PM_{10} emissions from onroad motor vehicles did not and do not significantly contribute to the total PM_{10} ambient concentrations in the area, the preamble of published final rule itself did not provide this information. This action corrects that omission. In rule document 04–23945 published in the **Federal Register** on October 27, 2004 (69 FR 62591), on page 62594 in the second column, under *2. Maintenance Demonstration* the revised preamble language is corrected to add a second paragraph to read—''West Virginia's May 24, 2004 submittal includes documentation that the ambient impact of PM_{10} emissions from onroad motor vehicles was not and is not significant as it has been and continues to be less than five percent of the total PM_{10} ambient concentrations in the area. Stationary (point) source emissions are responsible for the remaining impacts. The enforceable measures imposed by West Virginia to reduce emissions from these point sources are the basis of the Weirton area achieving the NAAQS for PM_{10}. Therefore, no motor vehicle emissions budgets for transportation conformity purposes are required for the Weirton area's maintenance plan.''

Statutory and Executive Order Reviews

As this action merely provides supplemental text to the preamble of the direct final rule published on October 27, 2004, please refer to that direct final rule (69 FR 62591, 62595) for information regarding applicable Statutory and Executive Order Reviews.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to rule document 04–23945 is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: November 3, 2004.

Donald S. Welsh,

Regional Administrator, EPA Region III.

[FR Doc. 04–24912 Filed 11–8–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7835–9]

Maine: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Maine has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect adverse comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Maine's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and the separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on January 10, 2005, unless EPA receives adverse written comment by December 9, 2004. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Dockets containing copies of the State of Maine's revision application and the materials which the EPA used in evaluating the revision have been established at the following two locations: (i) EPA Region 1 Library, One Congress Street–11th Floor, Boston, MA 02114–2023; business hours Monday through Thursday 10 a.m.–3 p.m., tel: (617) 918–1990; and (ii) Maine Department of Environmental Protection, Hospital Street, Augusta, ME 04333; business hours Monday through Thursday 8:30 a.m.–4:30 p.m., and Friday 8:30 a.m.–12:30 p.m., tel: (207) 287–7843. Records in these dockets are available for inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, Hazardous Waste Unit, EPA Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; tel: (617) 918–1647, e-mail: *leitch.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is

modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We have concluded that Maine's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Maine Final authorization to operate its hazardous waste program with the changes described in the authorization application. Maine has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Maine, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Maine subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Maine has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its full authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions.

This action does not impose additional requirements on the regulated community because the regulations for which Maine is being authorized by today's action are already effective under state law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect adverse comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule based upon this proposed rule that also appears in today's **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

If we receive adverse comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Maine Previously Been Authorized for?

The State of Maine initially received Final authorization on May 6, 1988, effective May 20, 1988 (53 FR 16264) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on June 24, 1997, effective August 25, 1997 (62 FR 34007).

G. What Changes Are We Authorizing With Today's Action?

On September 27, 2004, Maine submitted a final complete program revision application, seeking authorization for their changes in accordance with 40 CFR 271.21. In particular, Maine is seeking authorization for the Universal Waste Rule and for the metals portion of the TCLP rule, the authorization of which is a prerequisite for authorization of the Universal Waste Rule. Maine is including batteries, mercury thermostats, lamps, CRTs, mercury devices, motor vehicle mercury switches, and PCB ballasts on their list of universal wastes. In general, the Universal Waste Rule establishes streamlined hazardous waste management regulations which are intended to encourage the recycling of certain widely generated wastes, such as batteries.

We are now making an immediate final decision, subject to receipt of written comments that oppose this action, that Maine's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we grant Maine Final authorization for the following program changes:

Description of Federal requirement and checklist reference number	Analogous State authority [1]
Consolidated Checklist for the Toxicity Characteristic Revisions as of June 30, 2001	
(74) Toxicity Characteristic Revisions: 55 FR 11798, 3/29/90 as amended on 6/29/90, 55 FR 26986 (regarding metals other than chrome); (80) Hydrocarbon Recovery Operations: 55 FR 40834, 10/5/90 as amended on 2/1/91, 56 FR 3978, as amended on 4/2/91, 56 FR 13406, optional rule (ME is not seeking authorization for this provision); (84) Chlorofluoro Refrigerants: 56 FR 5910, 2/13/91, optional rule (ME is not seeking authorization for this provision); (108) Toxicity Characteristics Revision; 57 FR 30657, 7/10/92 (ME is not seeking authorization for this provision); (117B) Toxicity Characteristic Revision: 57 FR 23062, 6/1/92 (regarding metals other than chrome);	850.3A(2); 850.3A(3)(a)(ii)(b); 850.3A(3)(c); 850.3A(3)(d); 850.3A(4)(a)(xiv); 850.3B(5); 850.3B(5)(a) & (b); 850.3C Hazard Codes; 850, Appendix II; 852, Appendix I; 855.9G.

Description of Federal requirement and checklist reference number	Analogous State authority [1]
(119) Toxicity Characteristic Revision, TCLP: 57 FR 55114, 11/24/92 optional rule; (126) Testing and Monitoring Activities: 58 FR 46040, 8/31/93 (only as it relates to Appendix I of Part 268); (157) Land Disposal Restrictions Phase IV: 62 FR 25998, 5/12/97 (to remove and reserve Appendix I of Part 268); (192A) Mixture and Derived-From Rules Revisions: 66 FR 27266, 5/16/01 (ME is not seeking authorization for the exclusions in this provision);	
Consolidated Checklist for the Universal Waste Rule as of June 30, 2001	
(142A) Universal Waste Rule: General Provisions; 60 FR 25492, 5/11/95;	850.3A(2); 850.3A(4)(vii); 850.3A(10); 850.3A(11); 850.3A(13); 850.3A(13)(a)(vi); 850.3A(13)(a)(ix); 850.3A(13)(a)(xiii); 850.3A(13)(b)(1) through (b)(v); 850.3A(13)(c); 850.3A(13)(d);
(142B) Universal Waste Rule: Specific Provisions for Batteries, 60 FR 25492, 5/11/95;	
(142C) Universal Waste Rule: Specific Provisions for Pesticides, 60 FR 25492, 5/11/95 (ME is not seeking authorization for this provision);	850.3A(13(e); 850.3A(13)(e)(i); 850.3A(13)(e)(ii) and (e)(iii); 850.3A(13)(e)(vi) through (e)(ix); 850.3A(13)(e)(xii) and (e)(xiii); 850.3A(13)(e)(xv); 850.3A(13)(e)(xvi) and Notes; 850.3A(13)(e)(xix)c.; 850.3A(13)(e)(xxi)a. and (xxi)c; 850.3A(13)(e)(xxii) and (e)(xxiii); 850.3A(13)(e)(xxiii)a and (e)(xxiii)e.;
(142D) Universal Waste Rule: Specific Provisions for Thermostats, 60 FR 25492, 5/11/95;	
(143E) Universal Waste Rule: Petition Provisions to Add a New Universal Waste, 60 FR 25492, 5/11/95;	
(152) Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision, 61 FR 16290, 7/11/96;	850.3A(13)(e)(xxv)c.; 850.3A(13)(e)(xxvi) and (e)(xxvii); 850.3A(13)(f)(iv) through (f)(vi); 850.3A(13)(g); 850.3A(g)(ii); 850.3A(13)(g)(v); 850.3A(14); 850.3D; 850.3D(1); 850.3D(3) through (9);
(153) Conditionally Exempt Small Quantity Generator Disposal Options under Subtitle D, 61 FR 34252, 7/1/96 (ME is not seeking authorization for this provision);	
(157) Land Disposal Restrictions—Phase IV,62 FR 25998, 5/12/97 (ME is not seeking authorization for this provision);	851.3C; 851.3E; 853; 853.10B; 853.11O; 853.11Q, 854; 856; 857.4; 857.7D; 857.7H 857.9A; 857.9A(1), (2); 857.9A(3)(f); 857.9C;
(166) Recycled Used Oil Management Standards; Technical Correction and Clarification, 63 FR 24963, 5/6/98 and 63 FR 37780, 7/14/98 (ME is not seeking authorization for this provision);	
(169) Petroleum Refining Process Wastes,63 FR 42110, 8/6/98 (ME is not seeking authorization for this provision);	
(176) Universal Waste Rule—Technical Amendments; 63 FR 71225, 12/24/98;	
(181) Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, 64 FR 36466, 7/6/99;	

[1] State of Maine's Hazardous Waste Management Rules, effective January 23, 2001, November 3, 2002, and July 20, 2004.

Note: The final authorization of new state regulations and regulation changes is in addition to the previous authorization of state regulations, which have not changed and remain part of the authorized program.

H. Where Are the Revised State Rules Different From the Federal Rules?

The most significant differences between the proposed State rules and the Federal rules are summarized below. It should be noted that this summary does not describe every difference, or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand all of the requirements with which they will need to comply.

In this program change, EPA is only authorizing the State for the metals portion of the Toxicity Characteristic (TC) rule, for metals other than the chrome wastes at 850.3A(4)(xiv). EPA is not authorizing the Maine analog for 40 CFR 261.4(b)(6)(ii) regarding chrome wastes because the Maine regulations continue to reference the EP toxicity test instead of the TCLP test for the specific exemptions for the leather tanning wastes listed at 850.3A(4)(xiv). This will be corrected in the next program change for Maine. EPA also is not authorizing Maine for the organics and pesticide wastes (waste codes D012 through D043), because Maine has not yet adopted the TC regulations for these wastes. EPA will continue to directly enforce the TC Rules in Maine for the remaining Toxicity Characteristics of DO12 through DO43 and the chrome wastes since both of these rules were promulgated under the Hazardous Solid Waste Amendments (HSWA) and EPA can enforce this regulation when necessary. Regulated entities will need to comply with the entire TC rule, but some parts of the rule will be enforced directly by EPA and some parts by the State.

1. More Stringent Provisions

There are aspects of the Maine program which are more stringent than the Federal program. All of these more stringent requirements are, or will, become part of the federally enforceable RCRA program when authorized by the EPA, and must be complied with in addition to the State requirements which track the minimum Federal requirements.

The more stringent requirements relating to the Universal Waste Rule are as follows: Maine has not added pesticides to its list of Universal Wastes. Thus, pesticides in Maine remain fully regulated hazardous wastes. Also, all universal waste, except for ballasts and

mercury spill residue, must be sent for recycling under state rules whereas federal rules allow universal waste to be sent to treatment, storage or disposal facilities (TSDFs) or to a recycler. However, mercury spill residue and ballasts may be sent to a treatment, storage or disposal facility under the Maine rules. Also, in the Maine regulations generators can send universal wastes to their own central facility but not to another generator's facility and may also ship to a consolidation facility or directly to a recycler, whereas the federal rules allow universal waste generators to send their universal waste to another universal waste handler, a destination facility, or a foreign destination. Additionally, the State definition of small universal waste generator, which is an equivalent term for the federal small quantity handler of universal waste, is more stringent in that to meet this definition this category of generator can only generate or accumulate on site no more than 200 universal waste items, including batteries as described in 850.3A(14), or 4,000 motor vehicle mercury switches at a time or in any given month, and the total weight must be no more than 40 tons of cathode ray tubes or 5,000 kg of all other universal wastes. A one time generation of lamps under a Green Lights or similar program that is completed within 6 months or a mercury thermometer collection event, is exempt from the 200 item count provided that no more than 5,000 kg of universal waste are generated. In comparison, the federal definition of small quantity handler of universal waste means a universal waste handler who does not accumulate more than 5000 kilograms total of universal waste at any time.

2. Broader-in-Scope Provisions

There also are aspects of the Maine program which are broader in scope than the Federal program. The State requirements which are broader in scope are not considered to be part of the Federally enforceable RCRA program. However, they are fully enforceable under State law and must be complied with by sources within Maine. These broader-in-scope requirements include the following: Maine has added PCB ballasts to the State's universal waste rule. PCB ballasts are not considered a federal hazardous waste however, the federal rule allows a state to include state-only hazardous wastes in their universal waste rules. Also, in addition to including lamps that fail the TCLP test in the State's universal wastes rule, which is equivalent to the Federal requirements, the State includes lamps that contain mercury but pass the TCLP test in their universal waste rules, which is a partially broader in scope provision.

3. Different but Equivalent Provisions

There also are some Maine regulations which differ from, but have been determined to be equivalent to, the Federal regulations. These State regulations will become part of the Federally enforceable RCRA program when authorized by the EPA. These different but equivalent requirements include the following: (1) In addition to batteries, thermostats and mercury-containing lamps which are included in the federal universal waste rule, Maine has added CRTs, mercury devices and motor vehicle mercury switches to the State's universal waste rule. We deem this equivalent because the federal Universal Waste Rule allows states the flexibility to add additional hazardous wastes to their state list of universal wastes without requiring the waste to be added at the federal level; (2) In the federal universal waste rule, a universal waste handler may accumulate universal waste for more than one year from the date the universal waste is generated, or received from another handler, if the handler can show that this additional time is necessary to facilitate proper recovery, treatment or disposal. The state rule automatically assumes that a full container is necessary to facilitate proper recovery, treatment or disposal and no further proof is required to justify a longer storage period provided the generator complies with certain standards. These standards specify the container sizes for each type of universal waste and specifies that the storage must be for no more than 90 days from the date the container becomes full. We feel that the state's generic determination that a full container is necessary to facilitate proper recovery, treatment or disposal and that specific container size requirements apply is environmentally ''equivalent'' to the federal regulations which require sources to make case by case demonstrations when accumulating universal waste for more than one year.

I. Who Handles Permits After the Authorization Takes Effect?

Maine will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer and enforce any RCRA and HSWA (Hazardous and Solid Waste Act) permits or portions of permits which it has issued in Maine prior to the effective date of this authorization until the State incorporates the terms and conditions of the federal permits into the State RCRA permits. EPA will not issue any more new permits, or new portions of permits, for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Maine is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Maine?

Maine has not applied for and is not authorized to carry out its federal hazardous waste program in Indian country within the State, which includes the land of the Houlton Band of Maliseet Indians, the Aroostook Band of Micmacs, the Passamaquoddy Tribe at Pleasant Point and Indian Township, and the Penobscot Nation. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the federal RCRA program in these lands.

K. What Is Codification and Is EPA Codifying Maine's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart U for this authorization of Maine's program changes until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993); therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities or Tribal governments, as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action nevertheless will be effective January 10, 2005, because it is an immediate final rule.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 28, 2004.

Ira Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 04–24920 Filed 11–8–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2003–15245]

RIN 2105–AD47

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule.

SUMMARY: The Department of Transportation is amending certain provisions of its drug and alcohol testing procedures to change instructions to laboratories and medical review officers with respect to adulterated, substituted, and diluted specimen results. This change is intended to avoid inconsistency with new requirements established by the U.S. Department of Health and Human Services that went into effect on November 1, 2004.

DATES: This rule is effective November 9, 2004. Comments to the interim final rule should be submitted by December 9, 2004. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

(1) By mail to the Docket Management System (SVC–124), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001;

(2) By delivery to room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329;

(3) By fax to the Docket Management Facility at (202) 493–2251; or,

(4) By electronic means through the Web site for the Docket Management System at: *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this rulemaking. Comments to the docket will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The public may also review docketed comments electronically at: *http://dms.dot.gov*.

Anyone wishing to file a comment should refer to the OST docket number (OST–2003–15245).

FOR FURTHER INFORMATION CONTACT: Jim L. Swart, Deputy Director (S–1), Office of Drug and Alcohol Policy and Compliance, 400 Seventh Street, SW., Washington, DC 20590; telephone number (202) 366–3784 (voice), (202) 366–3897 (fax) , or *jim.swart@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Purpose

Recently, the U.S. Department of Health and Human Services (HHS) revised their Mandatory Guidelines (69 FR 19644) with an effective date of November 1, 2004. Among the many revisions contained in the HHS Mandatory Guidelines are the requirements that laboratories modify substituted specimen and diluted specimen testing and reporting criteria. HHS revised laboratory requirements for adulterated specimen testing. HHS also requires each Federal agency to conduct specimen validity testing (SVT) to determine if urine specimens collected under HHS Federal Workplace Drug Testing Programs have been adulterated or substituted.

While the Department of Transportation (DOT) intends to fully address all aspects of the HHS changes to their Mandatory Guidelines in a notice of proposed rulemaking (NPRM) to be published in the near future, we believe that it is appropriate to make a few modifications to part 40 to avoid a number of inconsistent requirements that the application of both part 40 and HHS Mandatory Guidelines may have created for laboratories and medical review officers (MROs) since November 1, 2004. Consequently, in this document, we are taking the following steps:

1. We have removed from part 40 the requirement that MROs deal with substituted results in a two-tiered fashion (*i.e.*, medical review for some and recollection under direct observation for others). MROs will provide medical review and verification for all laboratory-reported substituted specimen results. This change is necessary because, under the HHS Mandatory Guidelines, there will be no specimens with creatinine levels greater than or equal to 2 mg/dL that will be considered substituted.

2. We have also removed all part 40 references to substituted specimens having creatinine levels greater than or equal to 2 mg/dL. These simply will no longer exist under HHS Mandatory Guidelines.

3. We have made laboratory testing criteria for specific gravity and creatinine concentration of substituted specimens and diluted specimens consistent with the HHS Mandatory Guidelines. A urine specimen will be considered dilute when the creatinine concentration is greater than or equal to 2 mg/dL but less than 20 mg/dL and the specific gravity is greater than 1.0010 but less than 1.0030. Previously, urine specimens had been considered dilute when the creatinine concentration was above 5 mg/dL but less than 20 mg/dL and the specific gravity was greater than 1.001 but less than 1.003.

4. We have revised § 40.91 to make our authorized SVT consistent with the HHS Mandatory Guidelines. We have adopted HHS instructions that direct laboratories to perform validity tests for oxidizing adulterants and additional validity tests when certain conditions (*e.g.*, abnormal physical characteristics) are observed.

5. We have made laboratory results reporting requirements parallel to those in the HHS Mandatory Guidelines (with the exception of negative-dilute specimen results, explained in the section below).

Background

The DOT issued an interim final rule (IFR) on May 28, 2003 (68 FR 31624) in order to respond to scientific and medical information suggesting that we modify testing criteria for some specimens that were considered to be substituted and ultimately were treated as refusals to test. That 2003 IFR did not change the substitution criteria established by the HHS that we had used for our substitution criteria. However, the 2003 IFR required laboratories to report the numerical values of substituted specimens to MROs.

MROs were subsequently directed by the 2003 IFR to treat a substituted result as negative-dilute if the creatinine concentration was greater than or equal to 2 mg/dL. But, unlike part 40 procedures with other negative-dilute specimen results, MROs were instructed to direct employers to have the employee return to the collection site for a directly observed collection with no prior notice given to the employee. The result of the observed collection would be the result of record for the entire testing event. The HHS Mandatory Guidelines' approach to substituted test results allows DOT to simplify our guidance to MROs on how to deal with them.

The 2003 IFR solicited comments, and we received them from a dozen commenters. We will address these comments in the preamble to the forthcoming NPRM. In addition, some comments to the 2003 IFR mirrored comments that HHS received to the portion of the Mandatory Guidelines for which they requested comments. We will also take the HHS docket comments and their response to them into consideration in our upcoming NPRM.

While we have changed a number of items in part 40 to bring consistency between part 40 and the HHS Mandatory Guidelines (see previous section) regarding SVT, there are several important items on which the DOT and HHS rules will differ.

1. The DOT will maintain its current position that SVT is authorized but not required. In our 2000 regulation (65 FR 79462), we made SVT mandatory but retracted the requirement in technical amendments published in 2001 (66 FR 41944). We will not make SVT mandatory as a feature of this IFR, but may propose, in a forthcoming NPRM that we are considering, that such testing be made mandatory. Therefore, § 40.89 remains unchanged by this IFR. However, laboratories conducting SVT of DOT specimens must do so in accordance with the testing requirements established in the HHS Mandatory Guidelines.

In proposing mandatory SVT in the NPRM, we would consider HHS' entire Mandatory Guidelines and any subsequent HHS handbook materials. We would also update our cost figures for SVT (that were originally calculated four years ago) in the context of such a proposal. Ultimately, this should enable DOT-regulated employers not currently conducting SVT the time needed to arrange with their laboratories and Consortia/Third Party Administrators to do so.

2. In this IFR, we will require MROs to treat laboratory reported negative-dilute results with creatinine levels greater than or equal to 2 mg/dL but equal to or less than 5 mg/dL as negative-dilutes that require immediate recollections under direct observation. Therefore, MRO procedures at § 40.155 reflect this requirement and employers will continue to follow their obligations for negative-dilute results at § 40.197(b) and (c).

3. To assist MROs with their negative-dilute results responsibilities, we will require laboratories to provide creatinine and specific gravity numerical values for all specimens they report to the MRO as being negative-dilute.

Regulatory Analyses and Notices

The statutory authority for this rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*) and the Department of Transportation Act (49 U.S.C. 322).

This rule is not significant for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. It represents minor modifications to our procedures which are intended to further align our laboratory and MRO procedures with those requirements that are being directed by HHS. Their economic effects will be negligible. Consequently, the Department certifies, under the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities.

Under the criteria of section 553 of the Administrative Procedure Act (APA), an agency may, for good cause, determine that prior notice and public comment are impractical, unnecessary, or contrary to the public interest. The Department believes good cause exists for this interim change to be made without prior notice and public comment. It is imperative that some significant laboratory and MRO

requirements of the Department's regulation and that of HHS be harmonized.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 4th Day of November, 2004, at Washington DC.

Norman Y. Mineta,

Secretary of Transportation.

■ For reasons discussed in the preamble, the Department of Transportation amends part 40 of Title 49 Code of Federal Regulations, subtitle A, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority citation for 49 CFR Part 40 is revised to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*; 49 U.S.C. 322.

■ 2. Section 40.67 is amended by revising paragraph (a)(3) to read as follows:

§ 40.67 When and how is a directly observed collection conducted?

(a) * * *

(3) The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see § 40.197(b)(1)).

* * * * *

■ 3. Section 40.91 is amended by revising paragraphs (a), (b), (c), (d), and (e) and by removing paragraph (f) as follows:

§ 40.91 What validity tests must laboratories conduct on primary specimens?

* * * * *

(a) You must determine the creatinine concentration on each primary specimen. You must also determine its specific gravity if you find the creatinine concentration to be less than 20 mg/dL.

(b) You must determine the pH of each primary specimen.

(c) You must perform one or more validity tests for oxidizing adulterants on each primary specimen.

(d) You must perform additional validity tests on the primary specimen when the following conditions are observed:

(1) Abnormal physical characteristics;

(2) Reactions or responses characteristic of an adulterant obtained during initial or confirmatory drug tests (*e.g.*, non-recovery of internal standards, unusual response); or

(3) Possible unidentified interfering substance or adulterant.

(e) If you determine that the specimen is invalid and HHS guidelines direct you to contact the MRO, you must contact the MRO and together decide if testing the primary specimen by another HHS certified laboratory would be useful in being able to report a positive or adulterated test result.

■ 4. Section 40.93 is revised to read as follows:

§ 40.93 What criteria do laboratories use to establish that a specimen is dilute or substituted?

(a) As a laboratory, you must consider the primary specimen to be dilute when:

(1) The creatinine concentration is greater than or equal to 2 mg/dL but less than 20 mg/dL, and

(2) The specific gravity is greater than 1.0010 but less than 1.0030 on a single aliquot.

(b) As a laboratory, you must consider the primary specimen to be substituted when the creatinine concentration is less than 2 mg/dL and the specific gravity is less than or equal to 1.0010 or greater than or equal to 1.0200 on both the initial and confirmatory creatinine tests and on both the initial and confirmatory specific gravity tests on two separate aliquots.

■ 5. Section 40.97 is amended by revising (a)(2), (6) and (7) and (e)(1) and (2), and adding paragraph (e)(3), to read as follows:

§ 40.97 What do laboratories report and how do they report it?

(a) * * *

(2) Negative-dilute, with numerical values for creatinine and specific gravity;

* * * * *

(6) Adulterated, with numerical values (when applicable), with remark(s);

(7) Substituted, with numerical values for creatinine and specific gravity; or

* * * * *

(e)(1) You must provide quantitative values for confirmed positive drug test results to the MRO when the MRO requests you to do so in writing. The MRO's request may be either a general request covering all such results you send to the MRO or a specific case-by-case request.

(2) You must provide the numerical values that support the adulterated (when applicable) or substituted result, without a request from the MRO.

(3) You must also provide to the MRO numerical values for creatinine and specific gravity for the negative-dilute test result, without a request from the MRO.

* * * * *

§ 40.131 [Amended]

■ 6. Section 40.131(a) is amended by removing, after the word ''substituted'' and before the comma, the words ''with creatinine concentration of less than 2 mg/dL''.

■ 7. Section 40.145 is amended by revising paragraphs (a) and (e)(2) to read as follows:

§ 40.145 On what basis does the MRO verify test results involving adulteration or substitution?

(a) As an MRO, when you receive a laboratory report that a specimen is adulterated or substituted, you must treat that report in the same way you treat the laboratory's report of a confirmed positive for a drug or drug metabolite.

* * * * *

(e) * * *

(2) To meet this burden in the case of a substituted specimen, the employee must demonstrate that he or she did produce or could have produced urine through physiological means, meeting the creatinine concentration criterion of less than 2 mg/dL and the specific gravity criteria of less than or equal to 1.0010 or greater than or equal to 1.0200 (see § 40.93(b)).

* * * * *

■ 8. Section 40.155 is amended by revising paragraphs (a) and (c) to read as follows:

§ 40.155 What does the MRO do when a negative or positive test result is also dilute?

(a) When the laboratory reports that a specimen is dilute, you must, as the MRO, report to the DER that the specimen, in addition to being negative or positive, is dilute.

* * * * *

(c) When you report a dilute specimen to the DER, you must explain to the DER the employer's obligations and choices under § 40.197, to include the requirement for an immediate recollection under direct observation if the creatinine concentration of a negative-dilute specimen was greater than or equal to 2mg/dL but less than or equal to 5mg/dL.

§ 40.197 [Amended]

■ 9. Section 40.197 (b)(1) is amended by replacing the words ''(see § 40.145(a)(1))'' with the words ''(see § 40.155(c))''.

[FR Doc. 04–25025 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 69, No. 216
Tuesday, November 9, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19563; Directorate Identifier 2003–NM–10–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B16 (CL–604) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B16 (CL–604) series airplanes. This proposed AD would require replacing the side-brace fitting shafts of the main landing gear (MLG) with new, improved side-brace fitting shafts; inspecting for corrosion of the MLG side-brace fitting shafts; and replacing the nut, washer, and cotter pin of the MLG side-brace fitting shafts with new parts; as applicable. This proposed AD is prompted by the discovery of fractures of the MLG side-brace fitting shafts caused by corrosion on the forward side of the side-brace fitting shafts. We are proposing this AD to prevent fracture of the MLG side-brace fitting shafts, which could result in collapse of the MLG.

DATES: We must receive comments on this proposed AD by December 9, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical information: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7312; fax (516) 794–5531.

Plain Language information: Marcia Walters, *Marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004-NM–999-AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19563; Directorate Identifier 2003–NM–10–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B16 (CL–604) series airplanes. TCAA advises that there have been reports of fractures of the side-brace fitting shafts of the main landing gear (MLG). Investigation revealed that the fractures were caused by corrosion on the forward side of the MLG side-brace fitting shafts. Fractures of the side-brace

fitting shafts, if not corrected, could result in collapse of the MLG.

Relevant Service Information

Bombardier has issued Alert Service Bulletin (ASB) A604–32–018, Revision 01, dated February 22, 2002. The procedures in that ASB are divided into Parts A, B, and C, each of which applies to different groups of airplanes. Part A of the ASB describes procedures for replacing the side-brace fitting shafts of the left-hand (LH) and right-hand (RH) MLG with new, improved side-brace fitting shafts; and replacing the nut, washer, and cotter pin of the MLG side-brace fitting shafts with new parts. Part B of the ASB describes procedures for inspecting for corrosion of the LH and RH MLG side-brace fitting shafts, replacing the shafts with new, improved shafts if corrosion is found, and replacing the nut, washer, and cotter pin of the MLG side-brace fitting shafts with new parts. Part C of the ASB describes procedures for replacing, with new parts, the nut and washer on the forward side of each MLG side-brace fitting shaft. Accomplishing the applicable actions specified in the ASB is intended to adequately address the unsafe condition. TCCA mandated the ASB and issued Canadian airworthiness directive CF–2002–43, dated September 30, 2002, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require accomplishing the applicable actions specified in the service information described previously, except as discussed under ''Difference Among the Proposed AD, ASB, and Canadian Airworthiness Directive.''

Clarification of Inspection Terminology

In this proposed AD, we refer to the inspection for corrosion that is specified in the ASB as a ''general visual inspection.'' We have included the definition for this type of inspection in a note in the proposed AD.

Difference Among the Proposed AD, ASB, and Canadian Airworthiness Directive

Both the ASB and Canadian Airworthiness Directive specify reporting certain information and returning removed parts to Bombardier. This proposed AD would not require these actions.

Costs of Compliance

This proposed AD would affect about 163 airplanes of U.S. registry. The proposed actions would take up to 16 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is up to $169,520, or up to $1,040 per airplane.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2004–19563; Directorate Identifier 2003–NM–10–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 9, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. CL–600–2B16 (CL–604) series airplanes, serial numbers 5301 through 5550 inclusive, certificated in any category.

Unsafe Condition

(d) This AD is prompted by the discovery of fractures of the main landing gear (MLG) side-brace fitting shafts caused by corrosion on the forward side of the side-brace fitting shafts. We are issuing this AD to prevent fracture of the MLG side-brace fitting shafts, which could result in collapse of the MLG.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Bombardier Alert Service Bulletin A604–32–018, Revision 01, dated February 22, 2002.

Inspection/Replacement of MLG Side-Brace Fitting Shaft and Hardware

(g) Do the actions specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable, at the applicable compliance times specified in those paragraphs.

(1) For airplanes subject to Part A of the service bulletin as specified in paragraph 1.C., ''Effectivity,'' of the service bulletin: Within 3 months after the effective date of this AD, replace the side-brace fitting shafts of the left-hand (LH) and right-hand (RH) MLG with new, improved side-brace fitting shafts; and replace the nut, washer, and cotter pin of the MLG side-brace fitting shafts with new parts. Do these actions in accordance with Part A of the Accomplishment Instructions of the service bulletin.

(2) For airplanes subject to Part B of the service bulletin as specified in paragraph 1.C., ''Effectivity,'' of the service bulletin: Within 5 months after the effective date of this AD, perform a general visual inspection for corrosion of the LH and RH MLG side-brace fitting shafts, replace the shafts with new, improved shafts if corrosion is found, and replace the nut, washer, and cotter pin of the MLG side-brace fitting shafts with new parts. Do these actions in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(3) For airplanes subject to Part C of the service bulletin as specified in paragraph 1.C., ''Effectivity,'' of the service bulletin: Within 5 months after the effective date of this AD, replace, with new parts, the nut, washer, and cotter pin on the forward side of each MLG side-brace fitting shaft. Do these actions in accordance with Part C of the Accomplishment Instructions of the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Actions Done Previously

(h) Actions done before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A604–32–018, dated October 23, 2001, are acceptable for compliance with the corresponding actions required by this AD, provided that the additional actions specified in Part C of the Accomplishment Instructions of Bombardier ASB A604–32–018, Revision 01, dated February 22, 2002, are done, as applicable.

No Reporting Requirement

(i) Although the service bulletin referenced in this AD specifies reporting certain information and returning removed parts to Bombardier, this AD does not require these actions.

Alternative Methods of Compliance

(j) In accordance with 14 CFR 39.19, the Manager, New York ACO, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–43, dated September 30, 2002.

Issued in Renton, Washington, on November 1, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24937 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19560; Directorate Identifier 2004–NM–121–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A310 series airplanes. This proposed AD would require modifying the wire routing of electrical harness 636VB in the right-hand wing. This proposed AD is prompted by the manufacturer's analysis for compliance with Special Federal Aviation Regulation No. 88, which has shown that wiring 2M of the 115V anti-collision white strobe lights and wiring 2S of the fuel quantity indication system (FQIS) should be rerouted into separate conduits. We are proposing this AD to prevent chafing damage to wiring 2M and 2S, which could result in a short circuit and consequently introduce an electrical current into the wiring of the FQIS and create an ignition source in the fuel tank.

DATES: We must receive comments on this proposed AD by December 9, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical information: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19560; Directorate Identifier 2004–NM–121–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all Airbus Model A310 series airplanes. The DGAC advises that the manufacturer's analysis for compliance with SFAR 88 has shown that wiring 2M of the 115V anti-collision white strobe lights and wiring 2S of the fuel quantity indication system (FQIS) should be rerouted into separate conduits. The existing routing of wiring 2M and 2S through the same conduit could cause chafing damage to wiring 2M and 2S. This condition, if not corrected, could result in a short circuit and consequently introduce an electrical current into the wiring of the FQIS and create an ignition source in the fuel tank.

Relevant Service Information

Airbus has issued Service Bulletin A310–28–2140, Revision 04, dated March 31, 2004. The service bulletin describes procedures for modifying the wire routing of electrical harness 636VB in the right-hand wing. Modification of the wire routing includes:

- Removing certain components at the right-hand wing;
- Checking cable harnesses for damage and, if necessary, replacing any damaged wires;
- Installing a bracket;
- Rerouting of wiring 2M and 2S through separate conduits;
- Installing the conduits of wiring 2M and 2S and the wires to 2212VC and to the pylon;
- Rerouting the wires to 2212VC and to the pylon; installing the conduit with the wires to 2212VC and to the pylon; and
- Testing.

The DGAC mandated the service information and issued French airworthiness directive F–2004–005, dated January 7, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. According to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require modifying the wire routing of electrical harness 636VB in the right-hand wing. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and French Airworthiness Directive.''

Difference Between the Proposed AD and French Airworthiness Directive

The applicability of French airworthiness directive F–2004–005 excludes airplanes that accomplished Airbus Service Bulletin A310–38–2140 in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in that service bulletin. Such a requirement would ensure that the actions specified in the service bulletin and required by this proposed AD are

accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Costs of Compliance

This proposed AD would affect about 51 airplanes of U.S. registry. The proposed actions would take about 34 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $356 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $130,866 or $2,566 per airplane.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2004–19560; Directorate Identifier 2004–NM–121–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 9, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the manufacturer's analysis for compliance with Special Federal Aviation Regulation No. 88, which has shown that wiring 2M of the 115V anti-collision white strobe lights and wiring 2S of the fuel quantity indication system (FQIS) should be rerouted into separate conduits. We are issuing this AD to prevent chafing damage to wiring 2M and 2S, which could result in a short circuit and consequently introduce an electrical current into the wiring of the FQIS and create an ignition source in the fuel tank.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 72 months after the effective date of this AD, modify the routing of electrical harness 636VB in the right-hand wing by accomplishing all of the actions in the Accomplishment Instructions of Airbus Service Bulletin A310–28–2140, Revision 04, dated March 31, 2004.

Credit for Previously Accomplished Service Bulletins

(g) Modification of the routing of electrical harness 636VB accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–28–2140, Revision 02, dated May 24, 2002; or Revision 03, dated November 21, 2002; is acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) French airworthiness directive F–2004–005, dated January 7, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on November 1, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24938 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AC16

Distribution of ''Risk Disclosure Statement'' by Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend Rule 1.55 to provide that non-institutional customers may indicate with a single signature, in addition to the acknowledgment of receipt of various disclosures and the making of certain elections, the consent referenced in Rules 155.3(b)(2) and 155.4(b)(2) concerning customer permission for futures commission merchants (''FCMs'') and introducing brokers (''IBs'') to take the opposite side of an order.

DATES: Comments must be received by December 9, 2004.

ADDRESSES: You may submit comments, identified by RIN 3038–AC16, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *secretary@cftc.gov.* Include ''Proposed Amendments to Rule 1.55'' in the subject line of the message.
- Fax: (202) 418–5521.
- Mail: Send to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington DC 20581.
- Courier: See above.

Instructions: All comments received will be posted without change to *http://www.cftc.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or Susan A. Elliott, Special Counsel, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission. Three Lafayette Centre, 1155 21st Street, NW., Washington, DC

20581. Telephone: (202) 418–5439 or (202) 418–5464, or electronic mail: *lpatent@cftc.gov or selliott@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is proposing to amend Rule 1.55 to provide that the single signature by which non-institutional customers acknowledge receipt of basic risk disclosures of futures and option trading, and elect how hedging positions shall be handled in the event of a commodity broker bankruptcy, may also reflect the consent referenced in Rules 155.3(b)(2) and 155.4(b)(2) concerning customer permission for FCMs and IBs to take the opposite side of an order. The Commission adopted a similar rule amendment in November 2000,[1] but withdrew it the following month upon passage of the Commodity Futures Modernization Act of 2000.[2] Most of the rules adopted and withdrawn in 2000 were reproposed and re-adopted in 2001,[3] but this one was not. Recently, Commission staff received an inquiry about this issue and the Commission has determined to repropose the rule amendment.

The Commission first adopted the so-called single signature acknowledgment format in 1993.[4] It had proposed that use of the single signature format be limited to certain sophisticated customers.[5] However, the Commission stated in the final rule that three of four commenters noted ''that since when an account is opened customers generally receive and must acknowledge all prescribed disclosures at the same time, it is reasonable to permit the customer to acknowledge all such statements by means of a single signature. Such commenters contended that separate signatures do not convey the required disclosures more clearly and compellingly.'' [6] In that rule, the Commission extended the single signature acknowledgment format to all customers, but excluded the acknowledgments required by Rules 155.3(d) and 155.4(d) on the grounds that a separate signature would reflect more ''meaningful confirmation of the customer's review of the relevant disclosures.'' [7]

In 2000, the Commission adopted rule amendments that included the Rule 155.3(d) and 155.4(d) acknowledgments, and all other acknowledgments,[8] within the single signature acknowledgment format, concluding that the requirement of multiple signatures, which may or may not reflect enhanced review of the documents, is not practical in light of the need to further streamline the account opening process. The Commission noted: ''All of the commenters who addressed the proposed amendments to Rule 1.55(d) responded favorably to the expansion of disclosures and consents that could be acknowledged and made by a single signature, and the Commission is adopting the amendments as proposed. * * * The Commission agrees that the FCM may open the customer account simultaneously with receiving the acknowledgment of receipt and understanding of the risk disclosure statement, along with margin funds and any other required account opening documents, from the customer. However, the FCM will remain responsible for ensuring that the risk disclosure document is furnished to the customer in such a way that the customer can review and understand the document before committing funds to the FCM.'' [9]

II. Proposed Rule Amendment

Rule 1.55 ensures the important customer protection of requiring intermediaries to disclose the basic risks of futures and options trading to their non-institutional customers. Over the years, it has been recognized that the relative sophistication of the customer should determine the degree of disclosure obligation, with non-institutional and retail (and presumably less sophisticated) customers the beneficiaries of the most detailed disclosure.

One aspect of risk disclosure is intended to ensure that the customer understands and consents to the trading practices of FCMs and IBs that are permitted by Commission regulations. Rules 155.3(b)(2) and 155.4(b)(2) permit FCMs and IBs, respectively, to take the other side of any order of a customer, subject to contract market rules, if that customer has given prior consent. These rules implement the specific provisions of Section 4b(a)(2)(C)(iv) of the Act that prohibit knowingly taking, directly or indirectly, the other side of a customer order without the customer's consent.

The Commission recognizes the important customer protection interests served by Section 4b(a)(2)(C)(iv) of the Act and Rules 155.3(b)(2) and 155.4(b)(2) to address the inherent conflict of interest that arises when an FCM or IB is the opposite party to a transaction with its own customer. The Commission also recognizes that simplifying and streamlining the account opening process, which was begun in 1993 as described above, is also an important goal in today's financial markets. The Commission believes that the content of disclosure and that the manner of acknowledging receipt of such disclosure by non-institutional customers is appropriate to the single signature acknowledgment format. The Commission further believes that, as it determined in 2000, the acknowledgements required by Rules 155.3(b) and 155.4(b) may appropriately be included within the single signature.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[10] The Commission previously has determined that, based upon the fiduciary nature of the FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entities. With respect to IBs, the CFTC has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule.[11] In this regard, the rule being proposed would not require any IB to change its current method of doing business, and in fact eases a regulatory burden by permitting a single signature of the customer to represent an additional consent required by Commission regulations. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that this proposed regulation will not have a significant

[1] 65 FR 77993 at 78013 (December 13, 2000).

[2] 65 FR 82272

[3] 66 FR 45221 at 45226 (August 28, 2001) (proposed rules) and 66 FR 53510 at 53513 (October 23, 2001) (final rules).

[4] 58 FR 17495, 17498 (April 5, 1993).

[5] *See* 57 FR 34853 (August 7, 1992).

[6] 58 FR at 17498.

[7] Id. at 17498–99 & nn. 17–18.

[8] This included the amendment of Rule 1.55(d)(1) and (2) to permit within the ''single signature'' format the consents: (2) to allow electronic transmission of statements under new rule 1.33(g), and (2) to transfer funds out of segregated accounts to another account (such as a money market account).

[9] 65 FR at 77993 (December 13, 2000).

[10] 47 FR 18618–18621 (April 30, 1982).

[11] Id.

economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [12] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act (''PRA''). The amendment to Rule 1.55(d) that is the subject of this proposed rulemaking does not alter the paperwork burden associated with the OMB Collection of Information submission, OMB Control Number 3038–0022, Rules Pertaining to Contract Markets and Their Members, where the Commission most recently described the paperwork burden associated with the 2001 rulemaking amendments.[13] Thus, there is no need for an additional submission pursuant to the PRA.

List of Subjects in 17 CFR Part 1

Brokers, Commodity Futures, Consumer protection, Disclosure, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4b, 4c(b), and 8a(5) thereof, 7 U.S.C. 6b, 6c(b), and 12a(5) (2000), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (2003), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Section 1.55 is proposed to be amended by revising paragraph (d)(1) to read as follows:

§ 1.55 Distribution of ''Risk Disclosure Statement'' by futures commission merchants and introducing brokers.

* * * * *

(d) * * *

(1) Prior to the opening of such account, the futures commission merchant or introducing broker obtains an acknowledgment from the customer, which may consist of a single signature at the end of the futures commission merchant's or introducing broker's customer account agreement, or on a separate page, of the disclosure statements, consents and elections specified in this section and § 1.33(g), and in § 33.7, § 155.3(b)(2), § 155.4(b)(2), and § 190.06 of this chapter, and which may include authorization for the transfer of funds from a segregated customer account to another account of such customer, as listed directly above the signature line, provided the customer has acknowledged by check or other indication next to a description of each specified disclosure statement, consent or election that the customer has received and understood such disclosure statement or made such consent or election; and

* * * * *

Dated: November 4, 2004.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–24949 Filed 11–8–04; 8:45 am]

BILLING CODE 6351–01–P

[12] Pub. L. 104–13 (May 13, 1995).

[13] *See* 66 FR 45221, 45228 (August 28, 2001).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–040]

RIN 1625–AA09

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River, at Clinton, Iowa. The drawbridge would open on signal if at least 24 hours advance notice is given from 7:30 a.m., on December 15, 2004, until 7:30 a.m. on March 1, 2005. This proposed rule would allow time for making upgrades to critical mechanical components and perform scheduled annual maintenance and repairs.

DATES: Comments and related material must reach the Coast Guard on or before December 9, 2004.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. Commander (obr) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–04–040), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 7, 2004, the Union Pacific Railroad Company requested a temporary change to the operation of the Clinton Railroad Drawbridge across the Upper Mississippi River, Mile 518.0 at Clinton, Iowa to open on signal if at least 24 hours advance notice is given to facilitate critical bridge repair and annual maintenance. Advance notice may be given by calling the Clinton Yardmaster's office at (563) 244–3204 at any time; or (563) 244–3269 weekdays between 7 a.m. and 3:30 p.m.; or Mr. Tomaz Gawronski, office (515) 263–4536 or cell phone (515) 229–2993.

The Clinton Railroad Drawbridge navigation span has a vertical clearance of 18.7 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted due to the reduced navigation in winter months. Presently, the draw opens on signal for passage of river traffic. The Union Pacific Railroad Company requested the drawbridge be permitted to remain closed-to-navigation from 7:30 a.m., December 15, 2004 until 7:30 a.m., March 1, 2005, unless 24 hours advance notice is given of the need to open. Winter conditions on the Upper Mississippi River coupled with the closure of Rock Island Railroad & Highway Drawbridge, Mile 482.9, Upper Mississippi River, at Rock Island, Illinois will preclude any significant navigation demands for the drawspan opening. The Clinton Railroad Drawbridge, Mile 518.0 Upper Mississippi River is located upstream from the Rock Island Railroad & Highway Drawbridge. Performing maintenance on the bridge during the winter, when the number of vessels likely to be impacted is minimal, is preferred to bridge closure or advance notification requirements during the navigation season. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators.

Regulatory Evaluation

This rulemaking is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects that this temporary change to operation of the Clinton Railroad Drawbridge will have minimal economic impact on commercial traffic operating on the Upper Mississippi River. This temporary change has been written in such a manner as to allow for minimal interruption of the drawbridge's regular operation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposed rule will have a negligible impact on vessel traffic. The primary users of the Upper Mississippi River in Clinton, Iowa are commercial towboat operators. With the onset of winter conditions most activity on the Upper Mississippi River is curtailed and there are few, if any, significant navigation demands for opening the drawspan.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it

does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this proposed regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 7:30 a.m., December 15, 2004 until 7:30 a.m. March 1, 2005, in § 117.671 add new paragraph (c) to read as follows:

§ 117.671 Upper Mississippi River.

* * * * *

The Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River at Clinton, Iowa shall open on signal if at least 24 hours notice is given. Notice may be given by calling Clinton Yardmaster's office at (563) 244–3204 at anytime; or (563) 244–3269 weekdays between 7 a.m. and 3:30 p.m.; or Mr. Tomaz Gawronski, office (515) 263–4536 or cell phone (515) 229–2793.

Dated: October 27, 2004.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 04–24972 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Address Sequencing Services

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The United States Postal Service provides mailers with both manual and electronic address sequencing services for their address lists, including electronic address sequencing (EAS) service and computerized delivery sequencing (CDS) service. Mailers who prepare their mail using these services may qualify for postage discounts. In addition, these services help mailers use the best possible addresses on their mail. This improves mail deliverability and reduces the costs of the Postal Service.

Mailers who qualify for, and obtain, the highest level of address sequencing service (Level 3 Service) from the Postal Service for an address list, may then apply to obtain a CDS subscription for each separate address group in each 5-digit ZIP Code within that address list. The Postal Service proposes to streamline the process by which it provides seed addresses to CDS subscribers and accepts address lists from mailers for Level 3 Service. The Postal Service proposes to provide mailers with more detailed information so that they may properly submit address lists to the Postal Service in order to obtain address sequencing services. CDS subscribers will continue to obtain the benefit of using seed addresses to assist them in protecting their address lists. The Postal Service also proposes to clarify that the requirements for obtaining Level 3 Service and CDS subscriptions for Post Office box address groups is the same as for other address groups.

DATES: Written comments must be received on or before December 9, 2004.

ADDRESSES: Written comments should be mailed to the Computerized Delivery Sequence (CDS) Department, National Customer Support Center, United States Postal Service, 6060 Primacy Pkwy Ste 201, Memphis TN 38188–0001. Copies of all written comments will be available at this address for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Becky Dunn, National Customer Support Center, United States Postal Service, (800)-238–3150.

SUPPLEMENTARY INFORMATION: The Postal Service offers a range of manual and electronic address sequencing services not only to mailers who develop or own address lists, but also to mailers who use address lists they obtain from third parties. Mailers, as well as parties acting on behalf of mailers, may obtain address sequencing services by submitting address lists to the Postal Service either in the form of address cards or electronic address files (both forms are referred to as ''address lists''). The Postal Service only provides address sequencing and correction services. It does not provide address lists of postal customers to the public. See 39 U.S.C. 412.The Postal Service offers mailers three levels of address sequencing services for address lists:

Level 1 Service: The Postal Service arranges addresses in delivery sequence and removes undeliverable addresses from address lists.

Level 2 Service: In addition to Level 1 Service, the Postal Service inserts blank cards for missing addresses in an address list submitted as address cards, or delivery sequence numbers for addresses missing from the mailer's electronic address list file.

Level 3 Service: In addition to Levels 1 and 2 Service, the Postal Service inserts addresses for missing or new addresses either by address cards or into electronic address files, depending on whether the mailer has submitted its address list as address cards or as an electronic address list file. In order to obtain Level 3 Service, a mailer must satisfy the Postal Service requirements summarized below.

The Postal Service will provide Level 3 Service only if the address list contains at least ninety percent (90%), but not more than one hundred ten percent (110%), of the delivery addresses in each separate address group in a 5-digit ZIP Code (such as city, rural, Post Office box) after the Postal Service removes undeliverable addresses.

The Postal Service, as a new requirement, proposes that mailers must submit a completed Processing Acknowledgement Form (PAF Form) to the Postal Service in order to obtain Level 3 Service for an address list. A sample of this form follows this notice. Mailers must provide required information on the PAF Form such as contact information, whether they have a current CDS subscription, and if so, their computerized delivery sequence (CDS) customer number. In addition, mailers must submit information concerning the origin or acquisition of the address list submitted to the Postal Service. A mailer must attach a description to the PAF Form as to how it developed the address list if it states that it has not acquired the address list from a third party. If instead, a mailer states on the PAF Form that it has acquired the address list from a third party, the Postal Service proposes to require that the mailer submit written documentation from the owner of that address list (including any CDS subscriber who may have inserted seed addresses in to the address list), that authorizes the mailer to submit the address list to the Postal Service in order to obtain Level 3 Service or a CDS subscription. The CDS subscriber may set a date after which the mailer is no longer authorized to submit the address list to the Postal Service for Level 3 Service or a CDS subscription. The Postal Service will not provide Level 3 Service for an address list if an authorization from a CDS subscriber has expired.

Only a mailer who has qualified for and obtained Level 3 Service for ZIP Code groupings in an address list may apply to the Postal Service to obtain a CDS subscription for those ZIP Code groupings, thereby becoming a CDS subscriber. CDS subscriptions enable mailers to maintain current delivery sequencing information for their qualified address lists. The Postal Service periodically provides CDS subscribers with updated CDS file information that contains a list of addresses in a ZIP Code grouping arranged in delivery sequence as served by a specific Postal Service carrier. In addition, the Postal Service assists CDS subscribers in protecting their address lists through the Postal Service's seed address program.

The Postal Service proposes to streamline the process by which it provides qualified CDS subscribers with seed addresses for a ZIP Code and address group within an address list. A seed address is a fictitious address that CDS subscribers may elect to obtain from the Postal Service. Each seed address that the Postal Service assigns to a CDS subscriber is unique to that CDS subscriber. CDS subscribers may insert the assigned seed address (or addresses) into an address list as a way to identify that address list as belonging to the CDS subscriber. This may enable the detection of unauthorized use of the CDS subscriber's address list by other mailers.

The Postal Service understands that some CDS subscribers permit other mailers to use their address lists, and permit third-party intermediaries, such as list brokers, to provide the CDS subscribers' address lists to mailers. The Postal Service has experienced a number of problems with address lists that mailers acquire from third parties. Mailers appear to reasonably believe that they are authorized to submit the address lists for Level 3 Service and CDS subscriptions either based on representations made by the third-party intermediaries and list brokers, or by the failure of the third party to clearly explain the limited use of the address list. There are concerns in the mailing industry that some mailers who seek Level 3 Service and CDS subscriptions are not qualified to do so.

To resolve these problems, the Postal Service proposes to require that in the event that a CDS subscriber on its own, or through another party, authorizes a mailer to submit the subscriber's address list to the Postal Service for Level 3 Service, the CDS subscriber must provide the mailer with written authorization to do so. The Postal Service proposes that CDS subscribers who wish to obtain seed addresses must agree to be responsible for ensuring that any such third-party intermediaries or list brokers ensure that mailers who are seeking Level 3 Service receive the necessary written authorization in addition to the address lists. The mailer then must furnish this written authorization together with the completed PAF Form to the Postal Service, as described above, if the mailer seeks Level 3 Service for an address list it obtained from another party. The Postal Service will not begin Level 3 Service processing until it receives complete documentation. By implementing the foregoing procedures, the Postal Service believes that mailers who obtain address lists from third parties should be able to obtain Level 3 Service only for those address lists for which they have received written authorization.

In the event a mailer submits an address list it obtained from another party to the Postal Service for Level 3 Service and the Postal Service locates a seed address that has not been assigned to the mailer, the Postal Service will continue its present practice of notifying the CDS subscriber to whom the seed address has been assigned. The Postal Service will provide the CDS subscriber with the identity of the mailer. The Postal Service proposes to supplement this process by also notifying the mailer of the identity of the CDS subscriber. The Postal Service will not release to the mailer that part of the address list for the ZIP Code containing a seed address until it receives authorization from the CDS subscriber.

The CDS subscriber and the mailer, as well as any intermediaries or list brokers (if any), will then be responsible for independently resolving issues concerning the proper use of the address list without Postal Service involvement. Due to the fact that the parties themselves now will handle address list questions in a manner they see fit, the Postal Service proposes to discontinue its current practice of researching seed address problems. The Postal Service, however, will continue its existing practice of processing address groups without seed addresses in the address list submitted by the mailer.

The Postal Service also proposes to clarify in its address sequencing program materials that its requirements for mailers to obtain Level 3 Service and CDS subscriptions for Post Office box address groups in each 5-digit ZIP Code within an address list are the same as for other address groups, including the following: (1) Mailers must submit their address lists in the form of either address cards or electronic files to the Postal Service in order to obtain Level 3 Service or CDS subscriptions for Post Office box address groups, and (2) the Postal Service charges mailers the same fees for obtaining address sequencing services for Post Office box address groups as it does for other address groups.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 553(b)–(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual* (DMM) A920, incorporated by reference in the

Code of Federal Regulations (CFR). See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual as set forth below:

Domestic Mail Manual (DMM)

* * * * *

A Addressing

* * * * *

A900 Customer Support

* * * * *

A920 Address Sequencing Services

1.0 SERVICE LEVELS

* * * * *

[Revise item d to read as follows:]

d. Mailers who have obtained address sequencing services described in A920.1.c and 920.4.1 (Level 3 Service) for address lists, and who have a current computerized delivery sequence (CDS) subscription, may apply to USPS to obtain seed addresses to include in their address lists. Qualified CDS subscribers may elect to include a seed address in an address list for identifying the list and detecting the use of the address list by another mailer.

[Revise item e to read as follows:]

e. If a mailer states that it has obtained an address list from another party, and USPS locates a seed address when processing that address list for Level 3 Service, USPS will notify both the mailer who submitted the address list as well as the CDS subscriber to whom USPS has assigned the seed address. USPS will provide the CDS subscriber with the identity of the mailer, and will provide the mailer with the identity of the CDS subscriber. USPS will not release to the mailer those portions of the address list for the ZIP Codes containing the seed address, unless USPS receives written authorization to do so from the CDS subscriber if the mailer has obtained the address list from the CDS subscriber or a party acting on behalf of the CDS subscriber. USPS only will release those portions of the address list for ZIP Codes not containing seed addresses if the mailer meets all other USPS address sequencing requirements.

2.0 CARD PREPARATION AND SUBMISSION

* * * * *

[Revise title and text of 2.2 to read as follows:]

2.2 Limitations

The mailer is required to remit all fees to USPS for address sequencing services performed by USPS, including service for which USPS does not release to the mailer a ZIP Code containing a seed address. See A920.5 below. a. In order to obtain a Level 3 Service, the mailer must submit address cards or an address file (address list) that contains at least ninety percent (90%), but not more than one hundred ten percent (110%) of all possible delivery addresses for a specific 5-digit ZIP Code delivery area.

b. If a mailer requests Level 3 Service for an address list and fails to meet any USPS address sequencing requirements for a ZIP Code within that address list, the mailer may resubmit the address list for Level 3 Service for the 5-digit ZIP Code that fails to meet USPS requirements. In the event the mailer fails to meet all USPS address sequencing requirements for the 5-digit ZIP code on the third time it submits the address list to USPS, USPS will not accept the address list for that 5-digit ZIP Code for a period of 1 year from the date the mailer submits the address list to USPS for the third time.

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes if the proposal is adopted.

United States Postal Service Processing Acknowledgement Form (PAF) for Level 3 Address Sequencing Service

A mailer or a party acting on behalf of a mailer (Mailer), who submits an address list to the United States Postal Service (USPS) for Level 3 Address Sequencing Service, must submit the following completed documents to USPS at the time it submits the address list:

1. *USPS PAF Form.* This USPS Processing Acknowledgement Form (PAF) for Level 3 Address Sequencing Service, to which is attached:

a. *Address File Obtained from Another Party.* A Mailer who obtains an address list, or portion thereof, from another party, must attach a written Authorization from a Computerized Delivery Sequence (CDS) subscriber to submit the address list to USPS for Level 3 Address Sequencing; and/or

b. *Address File Created or Developed by Mailer.* A Mailer who states that it, or a party acting on its behalf, created or developed the address list, or portion thereof, must describe the process by which the address list was created or developed to the satisfaction of USPS; and

2. *USPS Delivery Unit Summary and Processing Acknowledgement Form.*

CDS subscribers may include ''seed'' addresses in their address lists to assist in identifying their lists. A seed address is a fictitious address that qualified CDS subscribers may elect to obtain from USPS. In the event USPS locates a seed address in an address list submitted for Level 3 Service and USPS has not assigned that seed address to the Mailer submitting the address list, and the Mailer has advised USPS that it obtained the address list from another party, USPS shall notify both the Mailer and the CDS subscriber that it has located the seed address. The Mailer and the CDS subscriber will be responsible for resolving issues concerning Mailer's use of the address list.

USPS will not release to the Mailer that portion of the address list for the ZIP Code containing the seed address until it receives an Authorization from the CDS subscriber. USPS will not release to the Mailer the identity of the seed address, or the address ranges or carrier routes containing the seed address. Provided that the address list meets all other USPS requirements for Address Sequencing Services, USPS shall release to the Mailer other ZIP Codes that do not contain seed addresses.

The Mailer is required to remit all fees to USPS for Address Sequencing Services performed by USPS, including service for which USPS does not release a ZIP Code containing a seed address. The Mailer is not relieved of its obligation to pay USPS for Address Sequencing Service performed for ZIP Codes containing seed addresses that USPS does not release to the Mailer. In the event Mailer does not timely remit all payments due to USPS, USPS may cancel the Mailer's CDS subscription, refuse to accept Mailer's address lists for Address Sequencing Services, discontinue other services provided by USPS to Mailer, initiate collection efforts, or seek other remedies.

Mailers must satisfy the requirements for and obtain Level 3 Address Sequencing Service for an address list in order to be eligible to obtain a Computerized Delivery Sequence (CDS) subscription from USPS for that address list.

Mailers must comply with USPS requirements for Address Sequencing Services and CDS subscriptions, including payment of all fees, that are set forth in the USPS Domestic Mail Manual (DMM) A920, Electronic Address Sequence (EAS) Service and CDS User Guides. USPS publishes these materials at http://www.usps.com.

Mailer Information:

Company Name:

Primary Contact: Secondary Contact:

Mailing Address:

City: State: ZIP+4:

Primary Contact Phone Number:

Primary Contact Fax Number: Primary Contact:

Email:

Secondary Contact Phone Number: Secondary Contact Fax Number: Secondary Contact:

Email:

Is Mailer a Current USPS Computerized Delivery Sequence (CDS) Customer? Yes No

If yes, what is Mailer's USPS Computerized Delivery Sequence (CDS) Customer Number?

Did Mailer obtain any portion of this address list from another party? Yes No

If no, attach a written description of how Mailer created or developed the address list to this PAF Form.

If yes, is the written Authorization attached to this PAF Form that permits Mailer to submit the address list to USPS for Level 3 Service the Authorization that Mailer received for this the address list? Yes No

If yes, does the Authorization state that seed addresses were removed from list? Yes No

Certification and Signature: Mailer, by submitting this PAF Form, and attachment(s), represents and warrants the following to USPS: (1) all information furnished on this PAF Form and attachment(s) is accurate, truthful and complete; (2) the undersigned is authorized to sign and deliver this PAF Form and attachment(s) on Mailer's behalf; (3) Mailer has read and agrees to the terms and conditions for USPS Address Sequencing Service set forth in Section A920 of the Domestic Mail Manual (DMM) and USPS EAS and CDS User Guides; (4) Mailer agrees to pay all fees assessed by USPS in accordance with the DMM; and (5) Mailer acknowledges that all requests for USPS Address Sequencing Service processing will be identified on a USPS password-secured Web site.

I understand that anyone who furnishes false or misleading information or who omits information requested on this PAF Form or attachment(s) may be subject to criminal sanctions (including fines and imprisonment), and/or civil sanctions (including multiple damages and civil penalties). The rights and remedies set forth in 18 U.S.C. 1001 shall be incorporated as if fully set forth herein.

Name and Title of Mailer's Authorized Representative (please print): _____

Signature of Mailer's Authorized Representative: _____

Date: _____

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 04–24887 Filed 11–8–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7836–1]

Maine: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Maine has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Maine. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing these changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect adverse comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by December 9, 2004.

ADDRESSES: Written comments should be mailed to Sharon Leitch, Hazardous Waste Unit, EPA Region 1, One Congress St., Suite 1100 (CHW), Boston, MA 02114–2023, or e-mailed to: *leitch.sharon@epa.gov.*

Dockets containing copies of the State of Maine's revision application and the materials which the EPA used in evaluating the revision have been established at the following two locations: (i) EPA Region 1 Library, One Congress Street-11th Floor, Boston, MA 02114–2023; business hours Monday through Thursday 10 a.m.–3 p.m., tel: (617) 918–1990; and (ii) Maine Department of Environmental Protection, Hospital Street, Augusta, ME 04333; business hours Monday through Thursday 8:30 a.m.–4:30 p.m., and Friday 8:30 a.m.–12:30 p.m., tel: (207) 287–7843. Records in these dockets are available for inspection and copying during normal business hours.

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, Hazardous Waste Unit, EPA Region 1, One Congress St., Suite 1100 (CHW), Boston, MA 02114–2023; tel: (617) 918–1647, e-mail: *leitch.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: October 28, 2004.

Ira Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 04–24921 Filed 11–8–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 98

[RIN 0970–AC18]

Child Care and Development Fund State Match Provisions

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises the Child Care and Development Fund (CCDF) regulations to permit States to designate multiple public and/or private entities as eligible to receive private donations that may be certified as child care expenditures for purposes of receiving Federal CCDF matching funds. This proposed rule also allows States to use public pre-kindergarten expenditures for up to 30 percent of the State match expenditures required to claim their full allotment of Federal CCDF matching funds.

DATES: *Comment Period:* You may submit comments through January 10, 2005. We will not consider comments received after this date.

ADDRESSES: You may mail comments to the Administration for Children and Families, Child Care Bureau, 330 C Street, SW., Room 2046, Washington, DC 20447. Attention: Shannon Christian, Associate Commissioner.

Commenters may also provide comments on the ACF website. To transmit comments electronically, or to download an electronic version of the proposed rule, please go to *http://regulations.acf.hhs.gov.* We will have comments available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Karen Tvedt, Policy Director, Child Care Bureau, at (202) 401–5130.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Child Care and Development Fund

Administered by the Child Care Bureau, CCDF assists low-income families, including families receiving or transitioning from Temporary Assistance for Needy Families (TANF), in the purchase of child care services, thereby allowing parents to work or attend training or education. States must spend a portion of their CCDF allotment on expenditures to improve the quality and availability of child care.

B. Summary of the Statutory Provisions Related to the State Match Requirement

CCDF is comprised of three funding streams, discretionary funds subject to annual appropriation by Congress as authorized under Section 658B of the CCDBG Act, 42 U.S.C. 9858, and mandatory and matching funds appropriated under Section 418 of the Social Security Act (''SSA''), 42 U.S.C. 618. Pursuant to Section 418(a)(2) of the SSA, the Federal CCDF matching funds are the funds remaining after the mandatory funds have been distributed to the States. Matching funds are allocated to the States on the basis of the number of children under age 13 in the State compared with the number of children under age 13 in the Nation. These funds must be matched by States at the State's Federal medical assistance percentage (FMAP) rate.

C. State Match Requirement Regulations

The current CCDF regulations (the ''current regulations'') are codified at 45 CFR part 98. The relevant matching fund requirements of the current regulations provide that donated funds from private sources may be qualified as State expenditures for purposes of receiving Federal CCDF matching funds, provided that such funds are transferred to or under the control of the State CCDF Lead Agency or given to the single entity designated by the State to receive donated funds. 45 CFR 98.53(e) and (f). The relevant matching fund requirements also provide that States may use public pre-kindergarten expenditures for up to 20 percent of the expenditures serving as maintenance-of-effort and up to 20 percent of the expenditures meeting CCDF matching requirements. 45 CFR 98.53(h). States seeking to use pre-kindergarten expenditures for between 10 and 20 percent of the expenditures serving as maintenance-of-effort or meeting CCDF matching requirements must provide a description of the efforts they will undertake to ensure that pre-kindergarten programs meet the needs of working families. They must also demonstrate how they will coordinate their pre-kindergarten and child care services to expand the availability of child care. 45 CFR 98.53(h)(4).

We propose to revise current regulations to implement a provision of the President's Good Start, Grow Smart Initiative and give States more flexibility in making the necessary State expenditures on child care to earn their full allotment of Federal CCDF matching funds. Specifically, the President's Good Start, Grow Smart Initiative provides that the amount of State pre-kindergarten expenditures that may be used for Federal match will be increased to give States more flexibility in funding quality activities in support of early learning. Further, in FY 2001 and FY 2002, five States failed to earn their full allotment of Federal CCDF matching funds. In recent months, ACF Regions and the Child Care Bureau have received requests from additional states for increased flexibility in the use of donated funds and public pre-kindergarten expenditures to meet CCDF matching requirements.

D. Statutory Authority

This proposed regulation is being issued under the authority granted to the Secretary of Health and Human Services (HHS) by Section 658E of the CCDBG Act, 42 U.S.C. 9858c.

II. Provisions of Proposed Rule

A. Certifying Private Donations as State Expenditures

1. Summary of the Regulations Regarding Certifying Private Donations as State Expenditures in the Current Regulations

In order to certify funds donated from private sources that are not transferred to or under State control as expenditures for the purpose of receiving Federal CCDF matching funds, the current regulations provide that States must designate a single entity to receive such privately donated funds and all such privately donated funds must be transferred to this single

designated entity. The specific provisions setting forth this requirement appear at § 98.53(f) of the current regulations and provide that funds donated from private sources ''may be given to the entity designated by the State to receive donated funds'' in the State Plan.

2. Consultation with States and Other Organizations

Requests have been made by State officials at the Child Care Bureau's annual meeting of State Administrators and through numerous written, e-mail, and telephonic correspondence for increased flexibility in meeting the States' CCDF matching requirements. The Child Care Bureau has also heard that States find the current regulations too restrictive when States seek to encourage coordination among early childhood education programs or to implement the President's Good Start, Grow Smart Initiative.

3. Changes Made in This Proposed Rule

In order to grant States greater flexibility in meeting the matching requirements for Federal CCDF matching funds, this proposed rule provides that States shall be allowed to designate multiple public and/or private entities to receive privately donated funds that may be certified as State expenditures for purposes of receiving Federal CCDF matching funds. We propose to revise Section 98.53(f) to provide that privately donated funds ''may be given to the public or private entities designated by the State to implement the child care program in accordance with Sec. 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds pursuant to Sec. 98.16(c)(2).'' Additionally, conforming changes are proposed to Sections 98.16(c)(2) and 98.53(e)(2)(iv) to reflect the fact that privately donated funds may be given to ''public or private entities.''

B. Public Pre-Kindergarten Expenditures

1. Summary of the Regulations Regarding Public Pre-Kindergarten Expenditures in the Current Regulations

The current regulations provide that, once States have met their maintenance-of-effort requirement, they may use public pre-kindergarten expenditures for up to 20 percent of their child care expenditures designated toward meeting CCDF matching requirements. States seeking to use the full 20 percent of pre-kindergarten expenditures to meet the matching requirements must provide a description of the efforts they will undertake to ensure that pre-kindergarten programs meet the needs of working families. They must also demonstrate how they will coordinate their pre-kindergarten and child care services to expand the availability of child care. The specific provisions setting forth this requirement appear at Section 98.53(h)(3) of the current regulations and provide that ''[i]n any fiscal year, a State may use other public pre-K funds for up to 20% of the expenditures serving as the State's matching funds under this subsection.''

2. Consultation With States and Other Organizations

Requests have been made by State officials at the Child Care Bureau's annual meeting of State Administrators and through numerous written, e-mail, and telephonic correspondence for increased flexibility in meeting the States' CCDF matching requirements. The Child Care Bureau has also been informed that States are finding the current regulations to be too restrictive when States seek to encourage coordination among early childhood education programs or to implement the President's Good Start, Grow Smart Initiative.

3. Changes Made in This Proposed Rule

In order to grant States greater flexibility in meeting the matching requirements for Federal CCDF matching funds, this proposed rule provides that once States have met their maintenance-of-effort requirement, they may designate a portion of their public pre-kindergarten expenditures as their expenditures toward Federal CCDF matching funds; provided that the portion of public pre-kindergarten expenditures designated as State matching funds may not exceed 30 percent of the amount of expenditures required by States to earn their full allotment of Federal CCDF matching funds. We propose to revise Section 98.53(h)(3) to provide that, ''[i]n any fiscal year, a State may use other public pre-K funds as expenditures serving as State matching funds under this subsection; such public pre-K funds used as State expenditures may not exceed 30% of the amount of a State's expenditures required to earn the State's full allotment of Federal matching funds available under this subsection.'' Additionally, conforming changes would be made to Sections 98.53(h)(4) to provide that the CCDF Plan ''shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20% of its maintenance-of-effort or 30% of its State matching funds in a fiscal year.''

III. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in Executive Order 12866. The Department has determined that this proposed rule is consistent with these priorities and principles.

Executive Order 12866 encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described earlier, the Child Care Bureau and ACF regional offices have been contacted by numerous States expressing their desire for greater flexibility in meeting their matching requirement for Federal CCDF matching funds. This rule addresses these concerns. In addition, we are providing a 60-day public comment period.

This rule is considered a ''significant regulatory action'' under Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) (RFA) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the RFA to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only the 50 States and the District of Columbia. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Assessment of the Impact on Family Well-Being

We certify that we have made an assessment of this proposed rule's impact on the well-being of families, as required under Section 654 of the Treasury and General Appropriations Act of 1999. This proposed rule will make it easier for States to receive their full allotment of Federal matching funds through CCDF. These funds are to be used by States to assist low-income families in purchasing child care services, to provide comprehensive consumer education to parents and the public, and to improve the quality and availability of child care.

D. Paperwork Reduction Act

In order for States to use the increased flexibility provided by the proposed rule, Lead Agencies must amend their Lead Agency Plans, the information

requirements of which are set forth in Section 98.16 of the current regulations. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Administration for Children and Families has submitted a copy of this section, together with a copy of this notice of proposed rulemaking to the Office of Management and Budget (OMB) for its review.

Title: Amendment to State/Territorial Plan Pre-Print (ACF–118) for the Child Care and Development Fund (Child Care and Development Block Grant).

Description: The legislatively-mandated plans serve as the agreement between the Lead Agency and the Federal Government as to how CCDF programs will be administered in conformance with legislative requirements, pertinent Federal regulations, and other applicable instructions and guidelines issued by ACF. This information is used for Federal oversight of the Child Care and Development Fund. Because the State Plans must accurately reflect the manner in which a State meets the matching requirements for Federal CCDF matching funds, in order for a State to use the increased flexibility provided by this proposed rule, it must submit an amendment to its plan reflecting the change in the manner in which it meets the matching requirement for Federal CCDF matching funds. Because the information required to take advantage of the provisions of this proposed regulation are already collected in the ACF–118, a new information collection document will not be necessary. ACF expects to publish proposed revisions to the ACF–118 in the **Federal Register** in October. These proposed changes should reach OMB in January 2005.

Respondents: State and territorial governments.

Burden Estimates:

Estimated Number of Likely Respondents: 22*.

Number of Responses Per Respondent: 1.

Average Burden Hours Per Response: 2.

Estimated Total Burden Hours: 44.

*Estimate based upon the total number of States using private donations and/or their public pre-kindergarten expenditures as their expenditures toward Federal CCDF matching funds in FY2002, plus an additional number of States that are expected to take advantage of the increased flexibility in using private donations and/or public pre-kindergarten expenditures to meet their State CCDF matching requirement.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in the following areas:

(1) Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;

(2) Evaluating the accuracy of the ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(4) Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Washington DC, *katherine_t._astrich@omb.eop.gov.*

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Expenditures made to meet the requirements for Federal CCDF matching funds are made entirely at the option of the State or Tribal government seeking the Federal CCDF matching funds.

F. Congressional Review

This proposed rule is not a major rule as defined in 5 U.S.C. 804.

G. Executive Order 13132

Executive Order 13132 guarantees ''the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act.''

The Secretary certifies that this proposed rule does not have a substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not preempt State law and does not impose unfunded mandates.

This proposed rule does not contain regulatory policies with federalism implications that would require specific consultations with State or local elected officials.

List of Subjects in 45 CFR Part 98

Child Care, Grant programs—social programs.

(Catalogue of Federal Domestic Assistance Programs: 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

Dated: March 16, 2004.

Wade F. Horn,

Assistant Secretary for Children and Families.

Approved: July 21, 2004.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, the Administration for Children and Families proposes to amend part 98 of title 45 of the Code of Federal Regulations as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

1. The authority for part 98 continues to read:

Authority: 42 U.S.C. 618, 9858.

2. Amend § 98.16 by revising paragraph (c)(2) as follows:

§ 98.16 Plan provisions.

* * * * *

(c) * * *

(2) Identification of the public or private entities designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to §98.53(f);

* * * * *

3. Amend §98.53 by revising paragraphs (f), (h)(3), and (h)(4) to read as follows:

§ 98.53 Matching fund requirements.

* * * * *

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this subsection. They may be given to the public or private entities designated by the State to implement the child care program in accordance with § 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds pursuant to § 98.16(c)(2).

* * * * *

(h) * * *

(3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In addition, in any fiscal year, a State may use other public pre-K funds as expenditures serving as State matching funds under this subsection; such public pre-K funds used as State expenditures may not exceed 30% of the amount of a State's expenditures required to earn the State's full allotment of Federal matching funds available under this subsection.

(4) If applicable, the CCDF Plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20% of its maintenance-of-effort or 30% of its State matching funds in a fiscal year. Also, the Plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

* * * * *

[FR Doc. 04–24944 Filed 11–8–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List *Cymopterus deserticola* (desert cymopterus) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list *Cymopterus deserticola* (desert cymopterus) as endangered under the Endangered Species Act of 1973, as amended (Act). After reviewing the available scientific and commercial information, we find that listing the species as threatened or endangered throughout all or a significant portion of its range is not warranted at this time. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to the species. This information will help us monitor the status of this species.

DATES: The finding announced in this document was made on November 9, 2004. Although no further action will result from this finding, we request that you submit new information concerning the status of, or threats to, this species, whenever it becomes available.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours, at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. Please submit any new information, materials, comments, or questions concerning this species to the above address.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES** section above) (telephone at 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific and commercial information indicating that listing may be warranted, we make a finding within 12 months of the date of the receipt of the petition. We may find that the petitioned action is: (a) Not warranted, or (b) warranted, or (c) warranted but precluded by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**.

On April 15, 2002, we received a petition, dated March 29, 2002, from the California Native Plant Society and the Center for Biological Diversity, requesting us to list *Cymopterus deserticola* (desert cymopterus) as an endangered species and designate critical habitat. On June 12, 2002, we sent a letter to the petitioners explaining that we would not be able to address their petition in the current fiscal year because court orders and settlement agreements required nearly all of our listing funding. On April 25, 2003, the California Native Plant Society and the Center for Biological Diversity filed a complaint against the Service for failure to make the mandatory 90-day and 12-month petition findings (*California Native Plant Society and the Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* C–03–1881–JCS). Settlement due dates were agreed to of February 1, 2004, for the 90-day finding, and, if the 90-day finding was found to be substantial, November 1, 2004, for the 12-month finding. The Director signed the 90-day finding on January 29, 2004. On February 10, 2004, we published a notice in the **Federal Register** announcing our initial petition finding that the petitioned action may be warranted (69 FR 6240) and initiated a status review at that time. We have now completed our status review of the best available scientific and commercial information on *Cymopterus deserticola,* and have reached a determination regarding the petitioned action.

Species Information

Cymopterus deserticola, an herbaceous perennial plant, is a member of the carrot family (Apiaceae). Individual plants generally reach 6 inches (in) (15 centimeters (cm)) in height when in flower. *Cymopterus deserticola* is unusual in having herbaceous above-ground leaves and inflorescences (flowering parts of plant) that die back at the end of the growing season, leaving only the perennial taproot to overwinter. The plant may only produce the leaves and inflorescences in years when favorable climatic conditions, including sufficient rainfall, are present. In some years, individuals may produce leaves but not inflorescences. In years when flowering does occur, the inflorescences emerge in early spring. During unfavorable climatic conditions, such as severe drought, the plant may persist solely as a dormant taproot; the length of time the perennial taproot of *C. deserticola* can survive is unknown.

Cymopterus deserticola grows on loose, sandy soils in Joshua tree woodland, saltbush scrub, and Mojavean desert scrub communities in the western Mojave Desert, at elevations between 2,000 and 3,000 feet (610 and 915 meters) (Bagley 1998). The sandy soils that *C. deserticola* requires can be found on alluvial fans and basins, stabilized sand fields, and occasionally sandy slopes of desert dry lake basins. This species typically grows in the cool, moist conditions of winter and early spring, and goes dormant as the warmer weather progresses in April and May (Bagley 1998). Very little is known

about the reproduction and recruitment of *C. deserticola.*

Range and Distribution

In 1915, Thomas Brandegee first described *Cymopterus deserticola* from material collected near Kramer Junction, San Bernardino County, California. The historic distribution of *C. deserticola* ranges from Apple Valley, San Bernardino County, northward approximately 55 miles (mi) (89 kilometers (km)) to the Cuddeback Lake basin in San Bernardino County, and westward approximately 45 mi (73 km) to the Rogers and Buckhorn Dry Lake basins on Edwards Air Force Base (EAFB) in Kern and Los Angeles Counties, California (Mitchell *et al.* 1995; California Department of Fish and Game's California Natural Diversity Database (CNDDB) 2003).

The Apple Valley sites are known only from historic collections made in 1915, 1920, and 1941. Recent attempts to locate *Cymopterus deserticola* in areas of the historic Apple Valley collections have been unsuccessful, and it appears that these sites have been lost as a result of urban development and off-highway vehicle (OHV) use (Moe 1988). The Apple Valley sites are also disjunct by at least 28 mi (45 km) from the nearest known extant populations (*i.e.*, group of individuals of the same species living and interacting in the same geographic area). The known extant range of the species is confined mostly to the Rogers Dry Lake, Harper Dry Lake, Cuddeback Dry Lake, and Superior Dry Lake basins. The Rogers Dry Lake basin, where most of the plants are known to occur, is located mainly on EAFB in the southwestern portion of the species' range. The Harper Dry Lake basin located in the central portion of the species' range is under the jurisdiction of the Bureau of Land Management (BLM) and private land owners. The Cuddeback Dry Lake basin located in the northern portion of the species' range is under the jurisdiction of BLM. The Superior Dry Lake basin located in the eastern portion of the species range is mainly on Ft. Irwin, including the Ft. Irwin expansion area. This extant range extends approximately 50 mi (80 km) from east to west and 35 mi (56 km) from north to south.

Since we published our 90-day finding on the petition to list the species on February 10, 2004 (69 FR 6240), the CNDDB received one new record of occurrence of *Cymopterus deserticola* in San Bernardino County. This brings the total number of known records in the CNDDB to 71 populations as of May 2004. We also received additional records of occurrence for Kern and San Bernardino Counties in 2003 and 2004 (Service files) which have not been entered into CNDDB. Currently there are a total of 105 known populations of *C. deserticola.*

The greatest number of known populations and individuals is located within the Rogers Dry Lake basin. The vast majority of the populations (approximately 87 percent) in this basin are located on EAFB, with a few of the known plants on BLM and private land to the north of the base. Intensive surveys for *Cymopterus deserticola* were conducted on EAFB in 1995 (Mitchell *et al.* 1995), during which 56 new populations were discovered. In all, 85 *C. deserticola* populations were observed within this basin in 1995, with 14,362 plants counted.

In 2003, EAFB developed a habitat model for *Cymopterus deserticola* and two other plant species of concern, *Calochortus striatus* (alkali mariposa lily) and *Eriophyllum mohavense* (Barstow woolly sunflower). The model used the habitat attributes of the known occurrences of these species. The purpose of the model was to identify other potential sites where these species might occur. EAFB then conducted field surveys to validate the model. Six new populations of *C. deserticola* were found on EAFB and just to the north of the base during these field surveys (Wood 2003). These new populations increased the known distribution and abundance of this species within the Rogers Dry Lake basin. Therefore, at least 91 (not 92 as incorrectly reported in the 90-day finding (69 FR 6240)) populations of *C. deserticola* are currently known to occur within the basin. According to the CNDDB (2004), the number of individuals reported ranges from a single individual on less than 10.7 square feet (1 square meter) to a population of 5,377 individuals on 376.3 acres (ac) (152.3 hectares (ha)).

The Cuddeback Dry Lake basin is under the jurisdiction of BLM, and the grazing privileges to this area have been acquired by non-profit environmental groups. Although extensive surveys for *Cymopterus deserticola* have not been conducted within the Cuddeback Dry Lake basin, four populations are currently known to occur within the basin. The number of individual plants in these populations varies from a few to more than 40 (CNDDB 2004), and additional data collected by BLM and the Department of Defense (DOD) in 2003 and 2004 (Service files) regarding these populations are being submitted to the CNDDB. Dr. Michael Conner of the Desert Tortoise Preserve Committee has observed individuals of *C. deserticola* within the Cuddeback Dry Lake basin and believes that the number of individuals would be found to be higher than is currently known if focused surveys for *C. deserticola* were conducted in the Cuddeback Dry Lake basin (M. Conner, pers. comm. 2004). Glenn Harris of the BLM has also found *C. deserticola* to be more prevalent and widespread within this basin than reported in the petition and the CNDDB. He has found that the reported distribution and abundance of this species within this basin increases as suitable habitat is surveyed (G. Harris, pers. comm. 2004). He also believes the distribution of individuals within this basin would potentially increase if surveys focusing on *C. deserticola* and its habitat were conducted, and the actual number of individuals within this basin probably ranges from several hundred to a few thousand.

Six known populations of *Cymopterus deserticola* occur in the Harper Dry Lake basin, totaling approximately 200 individual plants (BLM 2001). However, extensive surveys focusing on *C. deserticola* have not been performed within this basin.

Within the Superior Dry Lake basin, Silverman and Cione (BLM 2001) reported a previously unknown population of 40 individuals of *Cymopterus deserticola* in 2001. The U.S. Army's Ft. Irwin conducted surveys in 2004 and found that the species occurred in greater abundance and over a wider area than previously known (Mickey Quillman, Natural Resources Manager, Ft. Irwin, pers. comm. 2004). These surveys did not include lands within the China Lake Naval Weapons Center (CLNWC) or NASA's Goldstone facility that borders Ft. Irwin and the western expansion area of the Army's National Training Center. However, *C. deserticola* was observed at the boundary between Ft. Irwin and CLNWC, and Ft. Irwin and Goldstone, indicating that there is high probability that *C. deserticola* is also present on CLNWC and Goldstone.

The extent that a species is threatened depends on numerous factors, including the species' range and distribution. Currently, the known range of *Cymopterus deserticola* is primarily based on occurrence data submitted to the CNDDB, but such data does not rule out the existence of additional occupied areas. *C. deserticola* is cryptic in nature, and often requires several years of surveying to identify occupied and unoccupied habitat due to this species' short period of above-ground foliage and inflorescence. Also, survey information for *C. deserticola* is more complete for some areas than others, and large areas

within the plant's range have not been surveyed. With the exception of EAFB and the recent April and May 2004 surveys performed on Ft. Irwin's western expansion area in the Superior Dry Lake basin, the range and distribution of *C. deserticola* has been poorly documented, especially for non-DOD lands. In addition, survey results are not always comparable because of the variation in how individual plants and populations (group of individuals of the same species living and interacting in the same geographic area) are tallied across the landscape. Moreover, surveys only count the individuals visible above ground; consequently, survey numbers may represent only a subset of the total number of individuals within a population. Because there are no survey data for many areas, the range and distribution of *C. deserticola* are not well established and may be more extensive than indicated by currently available information. For example, many new populations of *C. deserticola* were found during recent focused surveys in Superior Dry Lake basin. From discussions with biologists from DOD (M. Quillman, pers. comm. 2004), BLM (G. Harris, pers. comm. 2004), and the Desert Tortoise Preserve Committee (M. Conner, pers. comm. 2004), *C. deserticola* is thought to be more abundant and have a wider distribution than currently documented. Nevertheless, based on the currently known numerous extant populations and the status of these populations, discussed below, we have determined that listing is not warranted at this time.

Discussion of Listing Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal endangered and threatened species list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cymopterus deserticola* are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.* According to the petition, *Cymopterus deserticola* is potentially vulnerable to habitat alteration and destruction due to military activities on EAFB, the expansion of Ft. Irwin, utility construction, OHV use, oil and gas development, and Land Tenure Adjustment (LTA) (a process whereby public and private lands are exchanged and consolidated). Of the 71 *C. deserticola* population occurrences reported in the CNDDB (2004), 55 (roughly 77 percent) are on land managed by EAFB, 9 are on BLM lands, 3 are on private lands, and 4 are located on lands with unknown ownership. Additional occurrences not yet reported to the CNDDB are located on land managed by the BLM and private land owners.

One of the threats to known *Cymopterus deserticola* habitat mentioned by the petitioners is from the cleanup of the Propulsion Directorate Plume of groundwater contamination in the Rogers Dry Lake basin area on EAFB (EAFB 1998). The petitioners claim that the associated effects from extracting contaminated groundwater would be surface disturbance and a massive change in hydrology, and that these effects may imperil the persistence of this large population. However, EAFB is not conducting, and is not planning to conduct, groundwater extraction (EAFB in litt. 2004). The only activity that may affect *C. deserticola* is groundwater monitoring, which includes installation of wells and access to wells via foot traffic to sample groundwater at the well sites. According to EAFB, from 1999 to 2003, cleanup activities associated with this plume, which underlies this large population, have disturbed less than 0.01 ac (0.004 ha) of the 86 ac (35 ha) associated with this known population. Therefore, the number of individual plants affected by this action is expected to be minimal due to the extremely small area of disturbance at this site.

Other military activities within the boundaries of EAFB include occasional foot traffic to conduct wildlife and plant inventories. These activities should have little or no impact on *Cymopterus deserticola.* Activities in the eastern portion of the base are generally limited to foot traffic and routine range operations that have a minimal impact on *C. deserticola,* and ground training using troops and vehicles in this area is rare, typically limited to existing roads and cleared areas (EAFB, in litt. 2004). No other activities are currently being conducted on EAFB that would affect the habitat of *C. deserticola* (Shannon Collis, pers. comm. 2004).

At the time the petitioners submitted their petition, only a single population of approximately 40 individual plants was known from the Superior Dry Lake basin. The petitioners claimed that this population would be threatened with extirpation from large-scale tank maneuvers that would result from the expansion of Ft. Irwin. Although this may have been the eventual outcome for the single known population, three additional populations have been found in this basin since the petition was submitted. These four populations vary by area and number of individuals. One population is located on 33 acres and contained 12 individuals, a second population located on 61 acres contained 60 individuals, a third population located on 298 acres contained 366 individuals, and a fourth population located on 371 acres contained 484 individuals (Ft. Irwin 2004). Although military training exercises are likely to adversely affect three of the four populations, Ft. Irwin has installed a permanent fence around the 298 acres containing the 366-plant population, thereby protecting this population from all military operations as well as from OHV use and grazing (M. Quillman, pers. comm. 2004). Permanent fencing has been effectively used by Ft. Irwin to protect the threatened plant, *Astragalus jaegerianus* (Lane Mountain milk-vetch) from military operations (M. Quillman, pers. comm. 2004). Fencing for *Cymopterus deserticola* and *A. jaegerianus* is maintained by Ft. Irwin on a monthly basis, and Ft. Irwin strictly enforces area closures. Electronic monitoring devices warn tracked vehicles on approach of closed areas, and breaches are rare (M. Quillman, pers. comm. 2004).

Although focused surveys for *Cymopterus deserticola* have not been conducted on CLNWC, which is located adjacent and to the north and west of Ft. Irwin, plants are known to occur there (M. Quillman, pers. comm. 2004). Ground-based military training operations do not occur on CLNWC, and threats to the plants on CLNWC are minimal. Focused surveys have also not been conducted on BLM lands adjacent to Ft. Irwin in the Superior Dry Lake basin. However, based on the presence of suitable habitat for *C. deserticola* on BLM land, it is highly likely that plants also occur there. As mentioned above, Ft. Irwin has conducted focused surveys of the base. To locate new populations and further delineate the range of the plant in the Superior Dry Lake basin, Ft. Irwin will expand their surveys for *C. deserticola* to include areas outside of Ft. Irwin's boundaries next year contingent upon adequate rains. CLNWC will also conduct surveys for *C. deserticola* next year, contingent upon adequate rains (Steve Penix, CLNWC, pers. comm. 2004). Therefore, because of the large number of plants (366) and their habitat (298 acres) that Ft. Irwin is protecting and the presence of plants on CLNWC where threats are minimal, we believe that *C. deserticola* is not likely to be in danger of extirpation in this area within the foreseeable future.

The petitioners claim that utility construction has impacted *Cymopterus deserticola* and its habitat in the

southern portion of Harper Dry Lake basin and the northern portion of Rogers Dry Lake basin. According to the petitioners, the known locations of *C. deserticola* within this utility corridor are the result of surveys performed for a linear energy project. Less than 1 percent of known *C. deserticola* individuals are located within designated utility corridors, and no new utility corridors are proposed in the West Mojave Plan (WMP) (BLM 2003). Utility corridors are used for both electrical transmission lines and oil and gas pipelines. Although past utility construction has likely resulted in the loss of some habitat and individual plants, we do not consider utility construction to be a major current threat to this species because very few plants are known to occur within existing corridors.

Heavy recreational OHV activity has been cited as seriously impacting potential *Cymopterus deserticola* habitat and may have been at least partly responsible for the extirpation of the population in Apple Valley (Moe 1988). The petitioners claim that OHV activity has impacted *C. deserticola* habitat in the Superior Valley, and BLM has assessed the habitat at the single previously known Superior Valley population as being in ''poor condition'' due to adverse effects from OHV recreation. However, with the expansion of Ft. Irwin, recreational OHV activity is now precluded from much of the area, and Ft. Irwin has now permanently fenced a large, 366-plant Superior Dry Lake population, thereby protecting it from OHV activity.

We have been unable to find any documentation indicating OHV activity as a threat to *Cymopterus deserticola* and its habitat within the Harper, Rogers, and Cuddeback Dry Lake basins. According to the WMP (BLM 2003), the Harper Dry Lake basin area is used for environmental education, nature study, and wildlife viewing, and OHV use is restricted to the open routes of travel. Within the Rogers Dry Lake basin located on EAFB, OHV activity is not allowed. Within the Cuddeback Dry Lake basin area, where there may be as many as a few thousand plants (G. Harris, pers. comm. 2004), OHV activity is designated by the BLM as a ''limited'' use area; in limited use areas, ''motorized-vehicle access is allowed only on certain existing routes of travel, which include roads, ways, trails, and washes'' (BLM 1980). In designated ''open'' use areas, ''vehicle travel is permitted anywhere in the area if the vehicle is operated responsibly in accordance with regulations and subject to permission of private land owners if applicable'' (BLM 1980). Open use areas are the preferred destination for OHV enthusiasts, and receive much more activity than limited or moderate use areas. This does not mean, however, that OHV activity is nonexistent in limited or moderate use areas, but rather the threat of OHV activity in these areas is minimal due to the majority of OHV activity taking place in open areas. Because OHV activity is either not permitted, or only permitted to the limited passage of vehicles across the area and allowed only on designated existing roads, and that the areas described above do not receive the level of OHV activity as open areas, we do not consider OHV use as a major threat to *C. deserticola* populations within the Harper, Rogers, and Cuddeback Dry Lake basin areas.

Presently, and in the foreseeable future, the existence of *Cymopterus deserticola* does not appear to be threatened by oil and gas development. We are not aware of any oil and gas development projects within the area occupied by *C. deserticola,* nor is BLM aware of any such projects (Larry Lapre, BLM, pers. comm. 2004).

The petitioners expressed concern regarding one population located north of EAFB in the Peerless Valley that is available for LTA. They state that this action would potentially remove another site from public domain. However, according to the Record of Decision for the Western Mojave Land Tenure Adjustment Project, ''Should a listed or sensitive species, other than those previously covered by consultation and conference, be found on a parcel proposed for disposal during site specific analysis, consultation will be initiated with Federal and State fish and wildlife agencies to determine if mitigation should be applied prior to or after disposal or if the disposal should not occur'' (BLM 1991). Since *Cymopterus deserticola* is considered by BLM to be a sensitive species, either the loss of this site would not occur or would be mitigated.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.* The listing petition acknowledges, and we agree, that current data do not indicate that this factor constitutes a threat to *Cymopterus deserticola.*

C. *Disease or Predation.* The listing petition acknowledges, and we agree, that current data do not indicate that disease constitutes a threat to *Cymopterus deserticola.* The listing petition also acknowledges that there is currently nothing in the scientific literature about the effects of livestock grazing on this species. However, grazing has been documented as a threat on EAFB in the Rogers Dry Lake basin area (EAFB, in litt. 2004), and as noted by the petitioners, grazing continues to occur in several areas within the range of *C. deserticola.*

Even though livestock grazing on EAFB is prohibited, a research study site for *Cymopterus deserticola* on EAFB was directly affected when the aboveground portion of all plants were eaten by trespass sheep in 1994. By 2001, EAFB installed a fence along the boundary of the base preventing access by livestock and eliminating the threat of grazing on *C. deserticola* in the Rogers Dry Lake basin area of EAFB (EAFB, in litt. 2004).

Cymopterus deserticola occurs within the 26,314-ac (10,649-ha) Harper Lake cattle grazing allotment, which is within the Harper Dry Lake basin and is managed by BLM. In the past, trespass grazing (cattle and sheep) from this allotment has been chronic on adjacent lands where a population of *C. deserticola* is located (BLM 1998). BLM has installed a fence to reduce the possibility of trespass grazing on the adjacent land and to confine the grazing to the allotment itself where, for the time being, grazing still occurs (Charles Sullivan, BLM, pers. comm. 2004). Therefore, currently, grazing by livestock on *C. deserticola* and potential impacts (*e.g.,* trampling, soil compaction) to the habitat have been minimized in the Harper Dry Lake basin, and we believe that *C. deserticola* is not likely to be in danger of extirpation in this area within the foreseeable future. In addition to the fencing installed by BLM, as mitigation for the Ft. Irwin expansion area, the Army has purchased lands within the Harper Lake cattle grazing allotment (Anthony Chavez, BLM, pers. comm. 2004). As a condition for this purchase, the owner has relinquished all grazing privileges to the allotment. Therefore, cattle grazing will no longer occur in this allotment, and the potential threat to *C. deserticola* from grazing will be eliminated from this large area.

Cymopterus deserticola occurs within the 49,000-ac (19,830-ha) Pilot Knob cattle grazing allotment, which is located within the Cuddeback Dry Lake basin. To benefit the desert tortoise, the Desert Tortoise Preserve Committee (Preserve Committee) and the Wildlands Conservancy purchased 1,360 ac (550 ha) of desert tortoise critical habitat within the allotment and thereby gained control of all grazing privileges, water rights, structures, and range improvements for the entire allotment (Desert Tortoise Preserve Committee 1996). The Preserve Committee does not

allow any livestock grazing to occur within the Pilot Knob allotment. Although the elimination of grazing in this 49,000-ac area is to protect the desert tortoise, the potential threat of grazing to *C. deserticola* has also been eliminated.

Grazing has occurred within the Superior Dry Lake basin in the past. However, with the expansion of Ft. Irwin, grazing is now precluded from much of the area, and Ft. Irwin has now permanently fenced a large, 366-plant Superior Dry Lake population, thereby protecting it from grazing.

At the Rogers Dry Lake basin, high levels of ''leaf predation'' on *Cymopterus deserticola* were observed in two studies on EAFB in areas not grazed by livestock (Mitchell *et al.* 1995; Charleton 1993). Such grazing was likely due to a variety of native animals such as black-tailed jackrabbits *(Lepus californicus)*, brush rabbits (Family Leporidae), ground squirrels (Family Sciuridae), kangaroo rats (Family Heteromyidae), mice (Families Cricetidae), desert tortoise, caterpillars (Order Lepidoptera), and beetles (Order Coleoptera) (Bagley 1998). Although the effects of grazing on *C. deserticola* by native wildlife are unknown, this type of grazing is a natural component of the Mojave Desert ecosystem, and we do not believe that native wildlife is a threat to *C. deserticola.*

D. *The Inadequacy of Existing Regulatory Mechanisms.* We have not used the WMP in our finding regarding *Cymopterus deserticola* because it is presently still in draft form, and is therefore, not an existing regulatory mechanism. However, the petitioners expressed concern about the draft WMP, which will function as a multiple species habitat management plan for the desert tortoise and other listed and sensitive species within the planning area. They claim that *Cymopterus deserticola* has been dropped from the planning process because the species cannot have a viable conservation strategy without military participation (BLM 2002). However, according to the draft Environmental Impact Report and Statement (EIR/EIS) for the WMP (BLM 2003), *C. deserticola* has not been dropped from the plan. The EIR/EIS states that *C. deserticola* that occurs in the northern Rogers, Cuddeback, and Harper Dry Lake basin areas is a species targeted for conservation measures. Conservation of this species is addressed on the portion of its known range that is outside of EAFB. The draft WMP (BLM 2003) requires botanical surveys for projects proposed within suitable habitat for *C. deserticola* (the North Edwards Conservation Area, and the Fremont-Kramer and Superior-Cronese Desert Wildlife Management Areas (DWMAs)). If the plant is located, prescriptions call for avoiding all individuals to the maximum extent practicable and reporting the loss of any plants. In Kern County, the draft WMP proposes the following measures: establishing the North Edwards Conservation Area (NECA) to protect *C. deserticola* populations that extend off of EAFB, requiring botanical surveys, limiting new ground disturbance to 1 percent of a DWMA, applying a 5:1 mitigation ratio within the Conservation Area, and adjusting the boundary of the NECA over time to reflect survey results. BLM intends to issue a final WMP within the next few months, and to begin implementing these conservation measures shortly thereafter.

The petitioners state that the lack of management or conservation strategies by EAFB and the ongoing projects on EAFB that adversely affect this species leave the future survival of *Cymopterus deserticola* populations in most of the Rogers Dry Lake basin uncertain. They also state that, since the core populations of this species are located on EAFB, without assured conservation measures in place, the long-term survival of *C. deserticola* remains in question.

As discussed above under Factor A, threats to *Cymopterus deserticola* on EAFB are minimal. In April 2004, EAFB revised the October 2001 Integrated Natural Resources Management Plan (INRMP) to include *C. deserticola,* thereby providing further assurance that the threats will remain minimal. The 2004 INRMP contains conservation measures (*e.g.*, develop and implement an education awareness program, project review, project alternatives designed to minimize impacts, construction monitoring, habitat modeling) to manage for *C. deserticola* and funding for research (*e.g.*, population status, additional habitat modeling, reproductive biology, growth experiments) on this species. In addition, one of the objectives of EAFB is to use existing inventory, monitoring, and research data to develop a management and long term monitoring plan. Thus, the 2004 INRMP for EAFB has a management strategy for the conservation of *C. deserticola.*

Based on the overall status of *Cymopterus deserticola* and the inclusion of *C. deserticola* in the INRMP for EAFB where the vast majority of the plants occur, the existing regulatory mechanisms are adequate. In the future, the inclusion of *C. deserticola* in the WMP will provide further protective measures to other populations outside of EAFB.

E. *Other Natural or Manmade Factors Affecting Its Continued Existence.* The petitioners claim that the extremely limited distribution and relatively small numbers of individuals of *Cymopterus deserticola* make populations vulnerable to stochastic extinction. Although it is possible that a few populations with very small numbers of individuals could be lost, we believe that the species is not at risk of extinction from stochastic events. The number of populations and individuals is now known to be greater than reported in the petition, and the species is distributed over a relatively broad area (approximately 50 mi (80 km) from east to west and 35 mi (56 km) from north to south). Because most of the one-hundred plus populations are secure, or have very minimal threats, we believe that listing is not needed at this time. Also, we are not aware of any other factors that may be considered a threat to *C. deserticola* at this time.

Petition Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. We reviewed the petition, information available in our files, other published and unpublished information, and comments submitted to us during the public comment period following our 90-day petition finding, and we consulted with recognized botanists and experts from other resource agencies. On the basis of the best scientific and commercial information available, we find that the proposal to list *Cymopterus deserticola* as threatened or endangered throughout all or a significant portion of its range is not warranted at this time. A summary of threats to the 105 total known populations of *C. deserticola* is provided in Table 1; we have evaluated the threat level using a scale of none, minimal, low, moderate, and high. Some of the threats described by the petitioners have now been minimized or reduced (*e.g.*, grazing) in some areas. Some potential threats described by the petitioners are not expected to occur (*e.g.*, change in hydrology on EAFB as a result of groundwater extraction or oil and gas development). Although some *C. deserticola* habitat will be lost to military training in the Ft. Irwin expansion area, Ft. Irwin has protected a large population in this basin, which in fact contains a larger number of individuals (366 rather than 40 individuals) within the expansion area than was mentioned in the petition. Overall, we believe the remaining

threats to the species are minimal to low. Public agencies and organizations have also implemented actions that have eliminated or reduced the threats to various populations of *C. deserticola* (*e.g.*, elimination of grazing from the Pilot Knob grazing allotment and the Harper Lake grazing allotment). Of particular importance, EAFB, where the vast majority of populations (approximately 87 percent) are known to occur, has included and implemented conservation measures for *C. deserticola* in the most recent revision to its INRMP. Overall, threats to *C. deserticola* on EAFB are minimal (Table 1).

TABLE 1.—GENERAL SUMMARY OF THE STATUS OF THE 105 TOTAL KNOWN POPULATIONS OF DESERT CYMOPTERUS (*Cymopterus deserticola*)

Basin	General land ownership	Number of known populations	Identified threats	Status of threats	Threat level
Rogers Dry Lake	Edwards Air Force Base (EAFB).	91	Cleanup	Not occurring	None.
			Military activities	Limited activities	Minimal.
			Grazing	Fencing installed on EAFB.	Minimal.
			Utilities	No new corridors	Minimal.
			Inadequacy of management.	INRMP modified	Minimal.
Cuddeback Dry Lake	BLM	4	Grazing	None in 49,000 acre Pilot Knob allotment.	None to Minimal.
			Off Highway Vehicle (OHV) use.	Limited use	Minimal to low.
			Energy	Not expected	None.
Harper Dry Lake	BLM/private	6	Grazing	Eliminated as mitigation for Ft. Irwin expansion.	None to Minimal.
			OHV use	Moderate use	Low.
			Energy	Not expected	None.
			Utilities	No new corridors	Minimal.
Superior Dry Lake	Ft. Irwin	4	Military activities	Protection of large population.	[1] None to high.

[1] Ft. Irwin has eliminated the threats to one large, 366-plant population. Threats from military training to the other three populations are moderate to high.

We will continue to monitor the status of this species and will accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. This information will help us monitor and encourage beneficial measures for this species.

References Cited

A complete list of all references cited herein is available on request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is Robert McMorran, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 29, 2004.

Marshall P. Jones Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 04–24700 Filed 11–8–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the White-Tailed Prairie Dog as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), announce a 90-day finding on a petition to list the white-tailed prairie dog (*Cynomys leucurus*) as threatened or endangered under the Endangered Species Act of 1973, as amended. We find the petition and other information available do not provide substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, we will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of the species or threats to it. This will help us monitor and encourage the conservation of the species.

DATES: The finding announced in this document was made on November 2, 2004. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: The complete file for this finding is available for inspection during normal business hours at the Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119. Submit new information, materials, comments or questions concerning this taxon to the Service at the above address.

FOR FURTHER INFORMATION CONTACT: Henry Maddux, Field Supervisor, at the address given in the **ADDRESSES** section or telephone 801–975–3330 or facsimile 801–975–3331.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that

the requested action may be warranted. We are to base this finding on information provided in the petition, and all other information available to us at the time the finding was made. Our standard for substantial information with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). When a substantial determination is made, we are required to promptly begin a review of the status of the species, if one is not already initiated.

On July 15, 2002, we received a formal petition to list the white-tailed prairie dog (*Cynomys leucurus*) as threatened or endangered, in accordance with provisions in section 4 of the ESA. The petition was filed by the Center for Native Ecosystems, Biodiversity Conservation Alliance, Southern Utah Wilderness Alliance, American Lands Alliance, Forest Guardians, the Ecology Center, Sinapu, and Terry Tempest Williams.

On August 27, 2002, we acknowledged receipt of the petition and advised the petitioners we would not be able to process the petition in a timely manner. On November 29, 2002, we received a notice of intent to sue from the petitioners concerning our failure to produce a 90-day finding on the subject petition in accordance with the provisions of section 4 of the ESA. We responded on February 11, 2003, reiterating that we would not be able to begin an evaluation of the white-tailed prairie dog petition until work on the higher priority activities was completed. On February 20, 2003, the petitioners filed a complaint to compel the USFWS to make a 90-day finding. This 90-day petition finding is made in accordance with a settlement agreement that requires us to complete a finding on the petition to list the white-tailed prairie dog by October 31, 2004 [*Center for Native Ecosystems,* et al. v. *Norton* et al. (cv–03–31–M (DWM))].

The contents of this finding summarize that information included in the petition (cited as Center for Native Ecosystems 2002) and other information readily available to us in our files at the time of the petition review. Most notable of the other information we used in our review was the multi-state White-Tailed Prairie Dog Conservation Assessment (Conservation Assessment) (cited as Seglund *et al.* 2004). Beginning in 2003, the White-Tailed Prairie Dog Working Group of the State Prairie Dog Conservation Team began work on a species assessment. The Draft Conservation Assessment was released May 19, 2004, and the final Conservation Assessment was released August 31, 2004. While our determination is based on the contents of the petition submitted we also included in our review the information in the Conservation Assessment. Because it was not practicable to respond to the petition for approximately 2 years, we considered the information in the Conservation Assessment in order to ensure that the best available information was used in our review. Our review for the purposes of a so-called ''90-day'' finding under section 4(b)(3)(A) of the ESA and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial scientific or commercial information'' threshold. In the case of the white-tailed prairie dog, had the petition not met the ''substantial scientific or commercial information'' standard, but the Conservation Assessment had included substantial information, we would have used that information to make a positive 90-day finding. We do not conduct additional research at this stage of the process, but we do critically review the petition as to the scientific validity of the information presented therein. As the ESA and regulations contemplate, at the 90-day finding we base our finding on the petitioner's information and on other information readily available to us in our files at the time of the petition review. Our determination is whether this information is scientific and substantial.

Biology and Distribution

Taxonomy

Prairie dogs are in the squirrel family, Sciuridae, and are endemic to North America (Hollister 1916; Hoogland 2003; Seglund *et al.* 2004). The white-tailed prairie dog is one of five prairie dog species that inhabit western North America. Prairie dogs belong to the genus *Cynomys* (Hollister 1916). The genus has been split into two subgenera (Clark *et al.* 1971, Pizzimenti 1975). Utah (*Cynomys parvidens*), Gunnison (*Cynomys gunnisoni*), and white-tailed prairie dogs are the three species that make up the subgenus *Leucocrossuromys* (Hollister 1916, Clark *et al.* 1971). Although Burt and Grossenheimer (1964 as cited in Knowles 2002) considered all members of the subgenus *Leucocrossuromys* to be a single species, based on Pizzimenti's (1975) work, it is doubtful that the single species concept for the subgenus *Leucocrossuromys* is valid (Knowles 2002). According to Knowles (2002), there is sufficient genetic and morphological evidence to conclude that there are three separate species within the white-tailed prairie dog subgenera. The subgenus *Cynomys* includes black-tailed (*Cynomys ludovicianus*) and Mexican prairie dogs (*Cynomys mexicanus*). The *Leucocrossuromys* subgenus prairie dogs have short tails with white tips and have weaker social structures than the *Cynomys* subgenus (Pizzimenti 1975).

Species Description

The white-tailed prairie dog is the largest member of the subgenera *Leucocrossuromys,* and is only slightly smaller than black-tailed and Mexican prairie dogs (Clark *et al.* 1971). They are between 315–400 millimeters (mm) (12.4–16.7 inches (in)) in length with a tail length of 40–65 mm (1.6–2.6 in) and weigh between 650–1,700 grams (g) (23–60 ounces (oz)) (Fitzgerald *et al.* 1994). The tail has a grayish white tip and is white on the entire terminal half (Merriam 1890, Fitzgerald *et al.* 1994). The coat is generally gray (Hollister 1916). They have distinctive dark brown or black cheek patches that extend above the eye with a lighter black stripe that extends below the eye onto the cheek (Fitzgerald *et al.* 1994). Male white-tailed prairie dogs are on average larger than females (Fitzgerald *et al.* 1994).

Ecology and Life History

Unlike black-tailed prairie dogs that live in grass-dominated habitats, white-tailed prairie dogs are found in drier landscapes including shrublands, semi-desert grasslands, and mountain valleys (Tileston and Lechleitner 1966; Clark 1977; Collins and Lichvar 1986; Fitzgerald *et al.* 1994; Gadd 2000). Like other prairie dog species, white-tailed prairie dogs rely on good visibility to enable them to see predators; however, they do not clip taller vegetation like black-tailed prairie dogs (Clark 1977). White-tailed prairie dogs occur at elevations ranging from 1,150 to 3,200 meters (m) (3,800 to 10,500 feet (ft)) (Tileston and Lechleitner 1966). Their habitats are generally on low slopes or level ground (Forrest *et al.* 1985, Collins and Lichvar 1986).

All prairie dogs are primarily herbivorous, and mainly forage on grasses and forbs (Stockard 1929, Kelso 1939). Although prairie dogs prefer forbs, they will consume other plants seasonally; for example, prairie dogs browse upon sagebrush and saltbush during early spring, grasses in summer, and seed heads following grass and sedge flowering (Kelso 1939, Tileston and Lechleitner 1966). Prairie dogs

obtain most of their water requirements through vegetation, and may become water-stressed if sufficient succulent vegetation is unavailable (Stockard 1929, Seglund *et al.* 2004).

White-tailed prairie dogs breed once a year and have a single litter averaging four to five pups (Hoogland 2001). They can reproduce at 1 year of age (Cooke 1993). Breeding occurs from late March to mid-April (Tileston and Lechleitner 1966). Pups are born in the burrows after a gestation period of approximately 30 days (Tileston and Lechleitner 1966), and emerge for the first time 4 to 6 weeks after birth (Bakko and Brown 1967). Reproductive success ranges from 30 to 60 percent (Tileston and Lechleitner 1966, Bakko and Brown 1967, Menkens and Anderson 1989).

Animal densities within white-tailed prairie dog colonies are significantly lower than in black-tailed prairie dog colonies (Eskey and Haas 1940; Tileston and Lechleitner 1966; Hoogland 1981; Clark *et al.* 1985). In white-tailed prairie dog colonies surveyed for black-footed ferret (*Mustela nigripes*) recovery, Biggins *et al.* (1993) reported a density range of 5.7–16.1 prairie dogs per hectare (ha) (2.3–6.5 prairie dogs per acre (ac)). Surveys of other white-tailed prairie dog colonies reported densities ranging between 0.7 and 7.9 prairie dogs per ha (0.3–3.2 prairie dogs per ac) (Tileston and Lechleitner 1966, Clark 1977). In comparison, black-tailed prairie dog densities vary depending upon the season, region, and climatic conditions, but typically are higher and range from 5 to 45 individuals per ha (2 to 18 individuals per ac) (Fagerstone and Ramey 1996, Hoogland 1995, King 1955, Koford 1958, and Miller *et al.* 1996, as cited in 69 FR 51218).

Prairie dogs are semi-fossorial (or adapted for digging) and construct their own burrow systems. Burrow systems can be extensive, with numerous entrances. The density of burrows varies based on the food resources available (Clark 1977). All prairie dog species are social and rely on a social structure for survival. Therefore, burrow systems are grouped together (Clark 1977). Burrow systems within one male's territory makes up a coterie (Hoogland 1995). A concentration of prairie dogs with a minimum of 20 burrows per ha (8 burrows per ac) on at least 5 ha (12 ac) comprises a colony (Seglund *et al.* 2004). Determining what constitutes the boundary of a white-tailed prairie dog colony is particularly difficult because white-tailed prairie dogs are more sparsely distributed than black-tailed prairie dogs (Seglund *et al.* 2004).

The definition of a complex and subcomplex has been defined in terms of black-footed ferret dispersal capabilities. It is unclear if these definitions are entirely adequate for white-tailed prairie dogs. A complex is a group of prairie dog colonies between which individual black-footed ferrets can migrate between them commonly and frequently. Colonies within a complex are separated from the nearest colony by no more than 7 kilometers (km) (4 miles (mi)), with no impassable barriers between the colonies (Seglund *et al.* 2004). A subcomplex is defined as an aggregation of colonies separated from the nearest adjacent group by no more than 7 km (4 mi), but due to various non-biological factors (*e.g.*, State boundaries, land ownership) the whole complex is not surveyed and management occurs on only a portion of the entire complex (Seglund *et al.* 2004).

White-tailed prairie dogs are active approximately 5 to 7 months per year, from early spring to fall (Clark 1977, Cooke 1993). Unlike black-tailed prairie dogs, white-tailed prairie dogs are obligate hibernators (Harlow and Menkens 1986, Harlow and Braun 1995). They hibernate in late fall and winter (Cooke 1993). The amount of time spent hibernating is determined by availability of food resources (Clark 1977). In warm weather, even in mid-winter, if grasses are growing, white-tailed prairie dogs have been observed feeding (Hollister 1916, Goodrich and Buskirk 1998).

Distribution, Abundance, and Trends

White-tailed prairie dogs' distribution ranges across four States—Wyoming, Colorado, Utah, and Montana (Knowles 2002). According to Knowles (2002), the range of white-tailed prairie dogs has not changed appreciably from the historical range. There are indications that abundance may have declined as a result of past control efforts and plague. However, historical abundance and distribution are not well documented for white-tailed prairie dogs (Seglund *et al.* 2004). In addition, white-tailed prairie dog surveys have used varying methodologies, have not always clearly specified occupied or unoccupied habitats, and have been conducted in areas of varying size (Seglund *et al.* 2004).

Accurate, comprehensive inventories of currently occupied white-tailed prairie dog habitat in each State are not available. The petitioners use a Gap Analysis predictive model to estimate 17,719,220 ha (43,785,146 ac) of historically suitable habitat range wide. The petition estimates currently occupied habitat at 325,526 ha (804,392 ac). The Conservation Assessment estimates the historical range of the white-tailed prairie dogs was 20,224,807 ha (49,974,813 ac). The Conservation Assessment estimates there are 340,470 ha (841,300 ac) of currently occupied habitat.

Neither the petition nor the Conservation Assessment provides a population estimate for white-tailed prairie dogs. Developing a reliable population estimate for white-tailed prairie dogs is complicated by the lack of accurate range-wide estimates of occupied acreage and limited density data.

Most of the multi-year white-tailed prairie dog data available is for large complexes that have been considered and monitored for black-footed ferret reintroduction. Other data exist throughout the range of the species, but they are limited to a single data point. Data on these larger complexes were collected in conjunction with black-footed ferret reintroduction efforts. The large white-tailed prairie dog complexes that were considered suitable as black-footed ferret habitat have been mapped and monitored. Because the data were collected for the purpose of determining habitat suitability for black-footed ferret reintroduction, we do not have specific population or trend information for smaller colonies and complexes across the species range. Where population estimates are not available, smaller colonies or complexes are described only by their presence and general location.

Concerns exist regarding the efficacy of using black-footed ferret survey data to evaluate the status of white-tailed prairie dog populations due to the questionable correlation between counts of active burrows and densities of animals (Menkens 1987, Severson and Plumb 1998, Powell *et al.* 1994). Estimates of occupied habitat are similarly complicated in part due to white-tailed prairie dog behavior. Burrow densities and activity levels are variable throughout a colony and mapping efforts have thus often utilized topographic features to describe colony and complex boundaries (Seglund *et al.* 2004).

The Conservation Assessment attempted to alleviate sampling and data recording deficiencies by (1) presenting data state-by-state rather than portraying range-wide population trends, (2) only providing prairie-dog population information on black-footed ferret reintroduction sites surveyed for three or more years, and (3) only providing population information on areas greater than 1,500 ha (3,706 ac). Coeffecients of variation and standard deviations were calculated to evaluate population

estimate variability (Seglund *et al.* 2004).

Inventory information on colonies and trends (if determinable) are detailed here by State. Table 1 lists those colonies with at least 3 years of monitoring data, consistent with information presented by the Conservation Assessment. Other, smaller colonies are identified and described in the text.

TABLE 1.—POPULATION ESTIMATES FOR WHITE-TAILED PRAIRIE DOG COMPLEXES MONITORED FOR CONSIDERATION AS POSSIBLE BLACK-FOOTED FERRET RE-INTRODUCTION SITES

[Data taken from Conservation Assessment, Seglund et al. 2004]

State and colony	1988	1989	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Wyoming:															
Shirley Basin	.....	.....	30,389	29,828	14,551	5,916	7,564	19,876	10,343	6,547	7,161	6,669	34,698	.....	.....
Meeteetse	25,494	17,692	.....	.....	1,299	.....	.....	.....	7,095	.....	.....	1,066	.....	.....	.....
Colorado:															
Coyote Basin	.....	.....	.....	.....	.....	.....	.....	.....	3,132	.....	5,509	6,666	3,545	3,677	1,055
Wolf Creek—West	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	19,719	.....	7,266	9,214
Wolf Creek—East	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	10,331	8,212	10,754
Utah:															
Coyote Basin	.....	.....	.....	.....	.....	.....	.....	.....	43,205	39,565	38,180	33,438	37,424	54,444	14,031
Kennedy Wash	.....	.....	.....	.....	.....	.....	.....	.....	.....	10,697	6,411	5,725	3,670	10,282	3,313
Shiner Basin	.....	.....	.....	.....	.....	.....	.....	.....	15,065	47,551	5,383	13,707	.....	.....	.....
Snake John	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	49,346	50,437	31,118

In Wyoming, white-tailed prairie dogs are found in Big Horn, Park, Hot Springs, Natrona, Fremont, Sublette, Sweetwater, Lincoln, Uinta, Carbon, and Albany Counties (Seglund *et al.* 2004). The Conservation Assessment provides population information for three complexes: Meeteetse, Shirley Basin, and Kinney Rim. There are an additional 26 colonies identified by the Conservation Assessment and the Petition for which population numbers or trend information are not provided. The Meeteetse Complex, in Park County, declined from an estimated 80,000 ha (200,000 ac) in 1915, to 4,900 ha (12,000 ac) of prairie dogs in 1981 when the last known wild black-footed ferrets were discovered there, to about 3,000 ha (7,000 ac) in 1986, to about 200 ha (500 ac) by 2000 (Knowles 2002). Population declines between 1915 and 1981 were probably, primarily, the result of intensive federal control efforts. Recent population declines at Meeteetse are probably the result of plague which first appeared in this complex in the mid-1980s (Biggins 2003, Seglund *et al.* 2004. Surveys in the Shirley Basin Complex, Carbon County, indicated large annual fluctuations of occupied habitat attributed to plague since 1991 (Seglund *et al.* 2004). From a high in 1991, the population declined approximately 78 percent by 1997 and 1999, but recent estimates indicate that the population has recovered to levels similar to 1991 numbers and densities. Number of colonies has doubled and occupied habitat has increased 50 percent since 1990 (Seglund *et al.* 2004). Accurate population trends and occupied habitat data are unavailable for the Kinney Rim Complex, in Sweetwater County. Plague apparently reduced population densities in 1989; prairie dogs still occupied the complex by 1993 (Conway 1989 and Albee 1993, as cited in Seglund *et al.* 2004). The petition cites personal communications from B. Luce (2001) documenting substantial declines at this complex by 1995. No more recent specific data are reported. For other complexes in the State, we only have single-year estimates for complex size and, thus, no ability to assess trends.

In Colorado, the range of the white-tailed prairie dog includes Moffat, Routt, Rio Blanco, Garfield, Mesa, Delta, Montrose, Eagle, Jackson, Ouray, and Larimer Counties (Seglund *et al.* 2004). The Conservation Assessment provides population information for three complexes: Little Snake, Wolf Creek, and Coyote Basin. Colonies also occur in 11 other counties or Bureau of Land Management (BLM) Resource Areas across Colorado for which population numbers or trend information are not provided. The Little Snake Complex, in Moffat County, encompassed 31,700 ha (78,300 ac) in 1989 (USFWS *et al.* 1995). In 1994, dramatic declines occurred at the same time plague-positive fleas were detected in the area (USFWS *et al.* 1995, Seglund *et al.* 2004). Inventories conducted on a portion of the Little Snake Complex in 1999 indicated a 90 percent decline since 1990 surveys (Seglund *et al.* 2004). Surveys in 2002 and 2003 indicated little if any change in prairie dog populations and drought conditions resulted in extensive vegetation losses which may have contributed to slow population recovery (Seglund *et al.* 2004). The Wolf Creek Complex, in Moffat and Rio Blanco Counties, was first mapped by Gilbert in 1976. Plague resulted in over 75 percent declines in this complex and other areas of the White River BLM Resource area in the mid-1980's (CDOW 1986, Seglund *et al.* 2004). Populations across the White River Resource area, including Wolf Creek, rebounded and approached pre-plague numbers by 1994 (Seglund *et al.* 2004). Surveys from 2000 through 2003 show relatively stable prairie dog populations on the east side of Wolf Creek and a 50 percent decline on the west side of Wolf Creek (Seglund *et al.* 2004). The Coyote Basin Management Area, straddling the Utah-Colorado border, fluctuated from 3,132 white-tailed prairie dogs in 1997 to 6,666 prairie dogs in 2000 to 1,055 prairie dogs in 2003 (Seglund *et al.* 2004); the 2003 figures represent a 65 percent decline from 1997 levels and an 84 percent decline from the high observed in 2000.

In Utah, white-tailed prairie dogs occur in Rich, Summit, Daggett, Uintah, Duchesne, Carbon, Emery, and Grand Counties (Seglund *et al.* 2004). The Conservation Assessment provides population information for five complexes: Coyote Basin, Kennedy Wash, Shiner Basin, Snake John, and Cisco Desert. There are an additional 15 colonies or areas that are identified as containing white-tailed prairie dog habitats, however, these areas have not been inventoried and there is no population trend information (Seglund *et al.* 2004). The Cisco Complex, in Grand County, has not been inventoried with consistent sampling techniques, however declines and low activity levels have been consistently reported since 1991 (Seglund *et al.* 2004). The Coyote Basin Subcomplex was first mapped in 1985 (Seglund *et al.* 2004). Prairie dog populations appeared relatively stable from 1997 through 2002 (Seglund *et al.* 2004). A high population estimate of 54,444 prairie dogs was

reported in 2002 with a subsequent 75 percent decline observed in 2003 (Seglund *et al.* 2004). Kennedy Wash Subcomplex surveys show a similar pattern. Prairie dog population estimates were reported to be a high of 10,000 animals in 1998 and again in 2002 with downward trends of 50 to 60 percent during interim years (Seglund *et al.* 2004). The Shiner Subcomplex declined by 44 percent between 1998 and 2000 and has continued to support only low density prairie dog populations (Seglund *et al.* 2004). The Snake John Subcomplex maintained highs of approximately 50,000 prairie dogs in 2001 and 2002, followed by a 38 percent decline in 2003; however, only 3 years of data are available, so long term trends are unknown (Seglund *et al.* 2004).

In Montana, white-tailed prairie dogs currently occur in Carbon County in the Clark Fork Valley (Seglund *et al.* 2004). Between 1975 and 1977, Flath (1979) identified 15 white-tailed prairie dog colonies in the State. In 1997, Flath revisited the 15 colonies and found only 2 remaining, but 4 new colonies were also identified (Montana Prairie Dog Working Group 2002, as cited in Seglund *et al.* 2004). The petitioners listed the following white-tailed prairie dog colonies as having been extirpated—West Fork, Wolf Creek, Chance, Bridger, Warren colonies No. 7 and No. 8, Bear Canyon colonies No. 9, No. 10, and No. 11, Gypsum Creek colonies No. 12 and No. 13, Silver Tip Creek, and Hunt Creek (D. Flath, Montana Fish, Wildlife, and Parks, pers. comm., as cited in Center for Native Ecosystems 2002). The petition asserts that these colonies have been extirpated for a variety of reasons including: plague (Warren colonies No. 7 and No. 8, Bear Canyon colonies No. 9, No. 10, and No. 11, and Gypsum Creek colonies No. 12 and No. 13), poisoning (Bridger), urban development (West Fork), and conversion to agriculture (Wolf Creek, Chance, Silver Tip Creek, and Hunt Creek) (D. Flath, pers. comm., as cited in Center for Native Ecosystems 2002. Although Montana represents the northern edge of the white-tailed prairie dog's range and totals less than 1 percent of the predicted range of the species (Seglund *et al.* 2004), colonies in Montana provide insights into the possible effects of human-caused factors and disease on small populations. That said, there is no indication that trends in Montana are representative of small colony trends range-wide. Occupied habitat is estimated at 48 ha (119 ac) within six colonies, a decline of 85 percent from the high of 280 ha (692 ac) within fifteen colonies in 1979.

TABLE 2.—MONTANA WHITE-TAILED PRAIRIE DOG (WTPD) OCCUPIED ACREAGE DATA BY COLONY

State and colony	Colony size ha (ac) 1975–1977	Colony size ha (ac) 1999–2003
Montana:		
1	2–4 (5–10)	
2	0.8 (2.0)	
3 (Chance Bridge)	30–34 (74–84)	5.1 (12)
4	8 (20)	
5 (Robertson Draw)	100 (250)	16.4 (40.5)
6	1 (2)	
7	28–40 (69–99)	
8	4–8 (10–20)	
9	32 (79)	
10	20–32 (50–79)	
11	16–24 (40–59)	
12	8–20 (20–49)	
13	1 (2)	
14	0.4–1 (1–2)	
15	1–4 (2–10)	
Duplex		9.1 (22)
S. Sage Creek		5.9 (15)
Warren		7.5 (19)
Inferno Creek		4.2 (10)
Total	[1] 280 (690)	[1] 48 (120)

[1] May not add due to rounding.
Source: Seglund *et al.* 2004.

It should be noted that some level of natural fluctuation in population size, occupied acreage, and density is expected. Some white-tailed prairie dog populations have been reported to fluctuate by more than 50 percent between consecutive years (Menkens and Anderson 1989, as cited in Seglund *et al.* 2004). Variation in densities between years and also among habitats is likely driven partly by local ecology such as site-specific topography, soil type, climate and vegetation quantity and quality. The Conservation Assessment notes that the reason some colonies rebound quickly and others never recover completely are poorly understood. Disease, especially the introduced pathogen responsible for sylvatic plague (*Yersinia pestis*), may play a role in ''amplifying population fluctuations'' (Menkens 1987, Forrest *et al.* 1988, Seglund *et al.* 2004).

Historically, white-tailed prairie dog populations were probably not static, but researchers have inferred that it is unlikely that populations fluctuated as dramatically as they do today (Seglund *et al.* 2004). However neither the petition nor the Conservation Assessment provide substantial scientific information on this inference specific to white-tailed prairie dogs. Observations of black-tailed prairie dogs provide some evidence that prairie dog populations may not have fluctuated historically to the extent that they do today. Biggins and Kosoy (2001) analyzed the role of the black-footed ferret and its relationship with prairie dogs. For example, plague has never been detected within black-tailed prairie dog colonies at Wind Cave National Park, South Dakota, and the population exhibits relatively stable yearly population levels (Hoogland 1995). This differs from a population at the Rocky Mountain Arsenal National Wildlife

Refuge near Denver, Colorado where epizootics of plague are frequent and extreme population fluctuations are common (Biggins and Kosoy 2001). White-tailed prairie dogs lack a comparable example because there are no plague free portions of their range.

Conservation Status

Pursuant to section 4(a) of the ESA, we may list a species of any vertebrate taxon on the basis of any one of the following factors—(A) present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other manmade or natural factors affecting its continued existence. The petition asserts that the range of white-tailed prairie dog populations has been negatively affected by plague; recreational shooting; poisoning; oil, gas, and mineral extraction; conversion of habitat to agricultural use; urbanization; fire suppression; overgrazing; noxious weeds; drought; and climate change. Oil, gas, and mineral extraction, conversion of habitat to agricultural use, urbanization, overgrazing, fire suppression and the spread of noxious weeds are discussed under factor A. Recreational shooting is discussed under factor B. Plague is discussed under factor C. The adequacy or inadequacy of regulatory mechanisms for protecting white-tailed prairie dogs is discussed under factor D. Poisoning, invasive species, drought, and climate change impacts are discussed under factor E.

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range.

With respect to destruction, modification, or curtailment of the species' habitat or range, the petition asserts that oil, gas, and mineral exploration and extraction processes destroy and fragment white-tailed prairie dog habitat. The petitioners claim that human activities associated with oil and gas development, including seismic activities and the construction and operation of well pads, roads, and other equipment and facilities, fragment habitat and negatively impact white-tailed prairie dogs. In addition, they assert that associated structures create raptor perches and increase predation risk on prairie dogs in the area. The petitioners also assert that associated roads and increased access facilitate recreational shooting. They also contend that the aforementioned activities damage native vegetation and introduce invasive species that quickly take hold. The petitioners claim that this vegetation damage and invasive species introduction results in further permanent loss of habitat.

The Conservation Assessment similarly concludes that oil and gas development, especially with decreased well spacing, will result in ''large amounts of habitat lost due to road development and well pad construction'' and states that the habitat will remain fragmented and lost. The Conservation Assessment also states that vibroseis (seismic exploration) may affect prairie dogs by collapsing tunnel systems, causing auditory impairment, and disrupting social structures (Clark 1986, as cited by Seglund *et al.* 2004). The Conservation Assessment also notes that coalbed methane development, including well development, pipelines, roads, and compressor sites, can increase human disturbance and habitat fragmentation and loss. Establishment of well pads and roads facilitate increased vehicular traffic, which may increase the risk of direct and indirect mortality (Seglund *et al.* 2004).

However, neither the petition nor the Conservation Assessment provide substantial scientific information beyond supposition and conjecture that oil and gas development results in losses of large amounts of habitat. The assertion of habitat fragmentation is not supported by substantial scientific evidence. In fact, the Conservation Assessment notes in some areas prairie dogs have continued to inhabit space where development is occurring. Neither the petition nor the Assessment provide substantial scientific information supporting the assertion that predation is increased by oil and gas development. No scientific information is provided that supports the assertion that direct and indirect mortality is affected by road construction or vehicular traffic. Both the petition and the Conservation Assessment note that large amounts of habitat will be lost to oil and gas development, and refer to the fact that the primary sites for oil and gas development occur within white-tailed prairie dog range. However, neither document provides substantial scientific information supporting the claim that large amounts of habitat will be lost to these activities. The assertion regarding the effects of vibroseis is unsupported by substantial scientific information. While the assertion that increased human disturbance is valid by inspection, there is no scientific information presented that substantiates its effect on prairie dogs.

The Conservation Assessment estimates 55 percent of the total occupied white-tailed prairie dog habitat is under BLM jurisdiction. Analyses of available geographic information systems (GIS) data shows that 25 percent of white-tailed prairie dog gross range in Utah is leased or encompassed by active combined oil and gas fields.

The petition reports that, in 2001, the BLM approved leases for 669 oil and gas areas encompassing 293,771 ha (725,925 ac) in Colorado; 295 oil and gas leases on 218,846 ha (540,780 ac) in Montana; 198 oil and gas leases on 132,386 ha (327,133 ac) in Utah; and 1,047 oil and gas leases on 457,728 ha (1,131,071 ac) in Wyoming. However, these are state-wide totals and it is not known what percentage of these areas overlap white-tailed prairie dog predicted range or occupied habitat. It should also be noted that not all leased lands are developed depending upon the results of exploration activities. Neither the petition nor Conservation Assessment present substantial scientific information on the effect in the species in terms of actual habitat affected.

In Colorado, oil and gas leasing and development is ongoing and proposed in occupied white-tailed prairie dog habitat. For example, the petitioners allege that 80 percent of the Little Snake Black-footed Ferret Management Area is considered of highest potential for oil and gas development. According to the petition, there are 7 oil and gas fields encompassing 355 wells within the Management Area, and the BLM Little Snake Field Office is evaluating the potential for additional coalbed methane development. Colorado's largest oil field, the Rangely Oil Field in Rio Blanco County, occupies 12,000 ha (30,000 ac) and overlaps with 3,000 ha (7,000 ac) of suitable white-tailed prairie dog habitat (Wolf Creek Work Group 2001). The overlap of the Rangely Oil Field and white-tailed prairie dog habitat represents 5 percent of estimated white-tailed prairie dog habitat in Colorado (Knowles 2002). Impacts on this development on population levels have not been well studied and neither the petition nor the Assessment provide substantial scientific information that the Rangley Oil Field may result in a 5% reduction in Colorado white-tailed prairie dog habitat nor that the Little Snake Black-footed Ferret management area maybe threatened with development that will harm white-tailed prairie dog habitat (for an in-depth discussion of this see the discussion on regulatory protections).

Oil, gas, and coalbed methane drilling continues in Utah, primarily in the Price Field Office area of the BLM, and in the Uintah Basin in northeastern Utah. The petitioners claim that between 1911 and 2000, a total of 8,737 wells were drilled in the Uintah Basin, Utah, where the large Coyote Basin, Kennedy Wash, Snake John, and Shiner Basin white-tailed prairie dog complexes occur. The petitioners estimate that energy exploration in the Uintah Basin represents 57 percent of all wells drilled in the State of Utah. Over three thimes the 10-year average of wells was approved in 2001 in the Uintah Basin's BLM Vernal Field Office area. It is not known how many of these wells remain active. Analyses of GIS data demonstrate that oil and gas leases and active combined fields overlap with approximately 55 percent of occupied white-tailed prairie dog habitat. However, neither the petition nor the Conservation Assessment provide substantial information that this development may have or may contribute to a curtailment of the species range.

The Conservation Assessment estimates that approximately 75 percent of predicted white-tailed prairie dog range occurs in Wyoming, of which 77 percent of the white-tailed prairie dog range in Wyoming has the potential to undergo or is undergoing oil and gas development to some degree (Seglund *et al.* 2004). The petition describes oil and gas development in Wyoming by BLM Field Office areas. According to the petition, most oil and gas development in the Casper Field Office area is occurring within white-tailed prairie dog range. Over the last 10 years, an average of 50 new wells has been drilled annually (W. Fitzgerald, BLM Casper Field Office, pers. comm., as cited in Center for Native Ecosystems 2002). The loss of habitat in the Cody Field Office area is attributed primarily to oil and gas development. Recent estimates of oil and gas well activity were not cited by the petition. The petitioners describe the Moxa Arch natural gas field, with approximately 50 to 100 new wells being drilled annually, as occupying approximately half of the white-tailed prairie dog habitat within the Kemmerer Field Office area (V. Phinney, BLM Kemmerer Field Office, pers. comm., as cited in Center for Native Ecosystems 2002). The petitioners report that as of December 2001, oil and gas projects in the Pinedale Field Office area comprised approximately 266,661 total ha (658,933 ac), with 3,111 approved well locations and 1,433 wells drilled. According to the petition, most of these fields (including the Pinedale Anticline Natural Gas project and Jonah II field) were located in and around prairie dog colonies. The petitioners further state that in the Rawlins Field Office area, up to 3,000 wells may be approved for the Continental Divide project (an oil and gas field development) which overlaps with white-tailed prairie dog habitat. This area already has 2,130 existing wells. Potential impacts of this future development are difficult to predict. While the petitioners provide substantial information regarding the number and location of oil and gas development, they do not provide substantial scientific information indicating that these developments affect prairie dog use of habitat. As a result, potential impacts of this future development are difficult to predict, thus we cannot conclude that the petitioners have provided substantial scientific information that it may result in a threatened or current loss of habitat.

The petition describes possible direct impacts from oil and gas development, including: clearing and crushing of vegetation, reduction of available habitat due to pad construction, road development and well operation, displacement and killing of animals, alteration of surface water drainage and increased compaction of soils (USFWS 1990, as cited by Seglund *et al.* 2004). However they do not provide substantial scientific information to support their assertions and thus we are not able to conclude that the adverse effects to prairie dogs may occur. For example, the Assessment cites one study that attempted to demonstrate the effects of oil and gas disturbance on white-tailed prairie dogs and information from that study is preliminary (Baroch *et al.* 2004, as cited by Seglund *et al.* 2004). The study observed population declines, but was unable to determine if the declines were attributed to oil and gas development activities or to other factors such as plague. In some instances, white-tailed prairie dogs continue to inhabit areas developed for oil and gas. Within Coal Oil Basin's Rangely Oil Field, where the majority of the area was drilled before 1984 at a spacing of one well every 8 ha (20 ac), white-tailed prairie dogs are consistently present (E. Hollowed, BLM, pers. comm. 2004). However, no formal monitoring information exists for the Rangely Oil Field; conclusions are based on informal observations. With the limited amount of information provided, it is not possible to determine that these oil and gas development activities adversely affect white-tailed prairie dogs.

Animal population densities should not always be presumed to be a direct measure of habitat quality (Van Horne 1983). Several studies show that white-tailed prairie dogs with higher density populations in areas of poor quality habitat exhibited lower body mass, delayed sexual maturity, and delayed dispersal when compared to relatively undisturbed, high quality habitats (Van Horne 1983, Rayor 1985, Dawson 1991, Trevino-Villareal and Grant 1998). Furthermore, habitat loss or degradation can result in reduction of the area and extent of colonies even when densities in the remaining areas remain higher (Johnson and Collinge 2004). Over the long-term, these factors could lead to population declines (Johnson and Collinge 2004). The petitioners do not provide substantial scientific information on how oil and gas development activities might reduce habitat in ways that affect white-tailed prairie dog reproduction and survival.

Beyond direct impacts from oil and gas activity, the Conservation Assessment suggests that indirect effects might occur if habitat adjacent to white-tailed prairie dog complexes is not maintained to allow complexes to shift on a landscape scale in response to plague and other factors. However, neither the petition nor the Conservation Assessment provides substantial information as to the need or acreage required to ensure conservation of local prairie dog populations.

Neither the petition nor the Conservation Assessment provide substantial scientific information supporting the assertion that predation is increased by oil and gas development. The assertion regarding the effect of vibroseis is unsupported by substantial scientific information. There is little scientific information to substantiate the effect of increased human disturbance on prairie dogs. Magle (2003) studied effects of human presence on a black-tailed prairie dog colony in Colorado. He observed prairie dog avoidance behaviors; *i.e.*, prairie dogs retreating to their burrows, in response to humans walking through a colony.

The petition and Conservation Assessment do not provide specific total acreages or distribution of white-tailed prairie dogs within leased areas, nor do they provide complete details of actual oil and gas infrastructure distribution relative to prairie dog colonies. Both documents identify current or projected threats to the species within the foreseeable future including mortality and habitat loss, fragmentation, and degradation, and show that current and projected oil and gas development extends across the range of the white-

tailed prairie dog. However, while both documents identify current or projected threats to the species due to oil and gas development impacts to habitat, the identified threats are speculative and neither document provides substantial scientific or commercial information supporting the speculation.

The petition cites agricultural land conversion and urbanization as causing some losses of white-tailed prairie dog habitat on a local scale. In Montana, historic land conversions for agricultural purposes have contributed to white-tailed prairie dog range contraction (Parks *et al.* 1999, as cited in Knowles 2002). The Conservation Assessment states that, in some cases, agricultural lands can be beneficial to white-tailed prairie dogs by providing foraging habitat. However, if the agricultural area requires repeated tilling during the growing season, prairie dogs will not be able to inhabit the area. In addition, the Conservation Assessment points out that prairie dog colonies in or adjacent to agricultural areas frequently are subject to control efforts. According to the Conservation Assessment, agriculture comprises only 3.7 percent of the species' gross historic range. Seglund (*et al.* 2004) thus concluded, loss of habitat from agricultural conversion is significant only on a local scale and is not a range-wide concern.

The petition and Conservation Assessment specifically refer to urbanization in the areas of Grand Junction, Delta, and Montrose, Colorado, and in the Uintah Basin, Utah. As human populations have increased in some of these areas, lands have undergone another type of conversion, agriculture to urban use. Conversion from agricultural lands to urban lands eliminates prairie dog habitat permanently. According to the Conservation Assessment, only 0.2 percent of the white-tailed prairie dog gross historic range is impacted by urbanization. Seglund (*et al.* 2004) thus concluded, loss of habitat from urbanization is significant only on a local scale and is not a range-wide concern.

The petition identifies livestock overgrazing and fire suppression as factors that have degraded white-tailed prairie dog habitat by altering plant species composition. Overgrazing is continued heavy grazing which goes beyond the recovery capacity of the forage plants (Vallentine 1990). Fire suppression in shrub steppe habitats has resulted in areas dominated with late-successional, homogenous stands of shrubs. With fire, shrublands are mosaic of herbaceous and shrub vegetation at varied successional stages (Klebenow 1972, as cited in Fischer *et al.* 1996). Combined overgrazing and fire suppression can result in the proliferation of shrub species and the spread of noxious weeds. Livestock also may trample and destroy biological (cryptogamic) soil crusts, increasing erosion and decreasing nutrient cycling. The petition concludes that resultant habitat alterations reduce forage availability, reduce forage diversity, and degrade the overall quality of available habitat.

It is unclear how significant a factor livestock grazing, fire suppression and desertification play in white-tailed prairie dog viability. Although the Conservation Assessment initially states that public rangelands have seen recent measurable improvements in range conditions, the Conservation Assessment and the petition both reference BLM's finding that 68 percent of the public rangelands are rated as degraded or unsatisfactory (U.S. General Accounting Office 1988, 1991). Because 55 percent of white-tailed prairie dog occurs on BLM land, this is an important consideration. However, neither the petition nor Conservation Assessment provide substantial scientific information demonstrating that livestock grazing or fire suppression are threatened or present sources of habitat loss.

Based on the preceding discussion, we do not believe that substantial information is available indicating that present or threatened destruction, modification, or curtailment of habitat or range may, either singularly or in combination with other factors, rise to the level of a threat to the continued existence of the species over a significant portion of the species range. While factors affecting habitat are in some cases (*e.g.*, oil and gas development, grazing, fire suppression) occurring across the range of white-tailed prairie dog no information as to the rangewide extent of these activities in terms of scale was provided. In addition, neither the petition nor the Conservation Assessment provided substantial scientific information on the actual overlap and effects of habitat losses and degradation associated with these factors relative to the distribution of white-tailed prairie dog colonies and complexes.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Shooting closures for white-tailed prairie dogs have been implemented year-round in Coyote Basin, Utah and seasonally (April 1–June 15) on all other public lands in Utah. Year round shooting closures also apply to white-tailed prairie dogs on federal lands throughout their range in Montana. Wyoming implements a shooting closure on a 1,917 ha (4,737 ac) conservation easement at Shirley Basin. No shooting closures exist for white-tailed prairie dogs in Colorado (Seglund *et al.* 2004).

The petition cites Knowles (1988) to assert that unregulated shooting of white-tailed prairie dogs in Colorado and Wyoming has had negative impacts. In Colorado counties with white-tailed prairie dogs, harvest statistics from 1999–2003 estimate that 28,005 individual prairie dogs were shot annually (CDOW 2002, cited by Center for Native Ecosystems 2002). Based on research, lactating females spend more time above ground during the months of April through July (Tileston and Lechleitner 1966, Bakko and Brown 1967). During this time, adult male activity decreases (Bakko and Brown 1967). The petition asserts if shooting occurs during these times, the female and juvenile prairie dogs are more vulnerable than males (Center for Native Ecosystems 2002). According to the Conservation Assessment, peak shooting pressure on white-tailed prairie dog colonies occurs in May and June when the weather is cooler and juveniles are emerging. The CDOW estimates that juvenile prairie dogs likely make up a disproportionately high percentage of prairie dogs shot (Keffer *et al.* 2000). The petitioners note that due to the disproportionate vulnerability of adult female and juvenile prairie dogs, it is reasonable to see how the demographic structure of shot colonies may differ from that of unshot colonies. The petitioners further reason that shooting may have further implications on behavior, emigration, and population density.

Neither the petition nor the Conservation Assessment provides substantial scientific information on the long-term impacts of recreational shooting on white-tailed prairie dogs. Shooting has the potential to locally reduce population densities and could slow or preclude recovery rates of colonies reduced by plague or other disturbances by being an additive factor to mortality. Available studies of recreational shooting at black-tailed prairie dog colonies have shown short-term colony population declines and behavioral changes (Knowles 1988, Vosburgh and Irby 1998). However, neither the petition nor the Conservation Assessment provides substantial scientific information on the long-term effects of this threat.

C. Disease or Predation

White-tailed prairie dogs are prey species for many mammalian and avian predators. These predators include black-footed ferrets, hawks, eagles, badgers (*Taxidea taxus*) and coyotes (*Canis latrans*). Predation does not appear to exert a controlling influence on prairie dog density (King 1955 as cited in Seglund *et al.* 2004, Tileston and Lechleitner 1966, Clark 1977).

The petition asserts that sylvatic plague is the main threat to white-tailed prairie dog persistence (Biggins and Kosoy 2001, Knowles 2002). Plague is caused by a bacterium (*Yersinia pestis*) not native to North America; fleas are commonly the vectors (Biggins and Kosoy 2001). Plague results in local extirpations, reduced colony sizes, increased variation in local population sizes, and increased distances between colonies (Cully and Williams 2001). All prairie dog species have shown high susceptibility to plague (Williams 1986). White-tailed prairie dog population declines of 85 to 96 percent within an epizootic event have been documented (Anderson and Williams 1997, Clark 1977).

Plague was probably introduced to the United States from Asia circa 1899 (Barnes 1982). The first record of plague in native mammals in North America was near Berkeley, California in 1908 among California ground squirrels (*Spermophilus beecheye*) (McCoy 1908, Wherry 1908, as cited by Cully 1993). Since then, plague moved eastward. According to the Centers for Disease Control (2002, as cited by Antolin *et al.* 2002), sylvatic plague is now distributed from the west coast to its eastern extant stretching along the 102nd meridian from North Dakota south to the 97th meridian in Texas. Within those east-west confines, plague is present from the Canadian to the Mexican border. The white-tailed prairie dog range falls well within these boundaries.

The first white-tailed prairie dog plague case was confirmed in 1936 (Eskey and Haas 1940). We do not have data to indicate that all white-tailed prairie dogs were exposed to plague at this time or the same time. Systematic white-tailed prairie dog surveys did not begin until the 1980's (when there was an effort to find black-footed ferret recovery or reintroduction sites) (Biggins and Kosoy 2001). At that time, the first recorded plague outbreaks were observed (Fagerstone and Biggins 1986a, as cited by Biggins 2003b). For example, in Meeteetse, Wyoming, plague was first recorded in 1985 when the population crashed. This large decline in a short amount of time was an epizootic event. Plague was again recorded in this complex between 1989 and 1990, and again in 1993 (Anderson and Williams 1993, Cully 1993)

Plague has now been confirmed across nearly the entire range of the white tailed prairie dog (Centers for Disease Control 2002, as cited by Antolin *et al.* 2002), and has had a range-wide impact (Knowles 2002). Biggins and Kosoy (2001) note that no examples can be found of plague-free white-tailed prairie dog populations. Thus, unlike black-tailed prairie dogs which maintain plague-free colonies in the eastern portion of their range, white-tailed prairie dogs do not have large insulated populations protected from the plague organism.

The petition concludes that individual white-tailed prairie dogs may be more susceptible than black-tailed prairie dogs. The petitioners cite preliminary research conducted by Dr. Tonie Rocke, a U.S. Geological Survey researcher, indicating that white-tailed prairie dogs may contract sylvatic plague with exposure to only a few plague bacilli versus the many plague bacilli that are required to infect black-tailed prairie dogs with plague. Although quite susceptible, plague antibody titers have been found in white-tailed prairie dogs, indicating exposure and survival of some individuals when exposed to plague (Cully and Williams 2001, Biggins 2003a). Cully and Williams (2001) and Biggins (2003a) research on plague and prairie dogs in the laboratory found one white-tailed prairie dog with an apparent immunity to plague, and Biggins (2003a) found 3 out of 154 white-tailed prairie dogs with plague antibody titers. However, Biggins (USGS pers. comm. 2004) also states that plague antibody titers have been so rare in wild white-tailed prairie dogs colonies that research efforts were not previously directed to the possibility of immunity. Populations of white-tailed prairie dogs thus far have remained highly susceptible to plague even after repeated exposure (Biggins and Kosoy 2001). There is no information on the ability of adults to pass a developed immunity onto their offspring.

Pizzimenti (1975) found that of the five species of prairie dogs in the North America, white-tailed prairie dogs have the largest number of flea species. This suggests white-tailed prairie dogs may be more likely to contract plague from other mammalian species because they are more likely to host the same flea species as other mammalian species (Pizzimenti 1975). This susceptibility can result in epizootic events in which large numbers of animals die within a few days (Cully 1993, Lechleitner *et al.* 1962). Infected fleas have been found to exist in burrows for up to 13 months following a plague event (Fitzgerald 1993). The continued presence of the disease also can affect low-density white-tailed prairie dog colony populations enzootically. Enzootic plague causes some mortality within the colony, but not all individuals become affected simultaneously because of low density and reduced contact. Therefore, low-density populations remain at low densities. Plague not only results in the loss of large numbers of individual animals, it also may alter population dynamics, dispersal, and may result in secondary impacts to habitat.

Responses of white-tailed prairie dog populations to plague are reportedly variable over the long term, because of intrinsic and extrinsic factors. Superficially, some social and behavioral traits of white-tailed prairie dogs appear to favor their long-term persistence in a plague environment (Biggins and Kosoy 2001), in comparison to other prairie dog species. The rate of spread of a plague epizootic is dependent on the density of the host population density (Barnes 1982). White-tailed prairie dog colonies are less dense and more widely dispersed than black-tailed or Gunnison's prairie dog colonies, which may slow transmission rates (Cully 1993, Cully and Williams 2001, Eskey and Haas 1940). Looser social structures and hibernation behavior displayed by white-tailed prairie dogs also may reduce transmission among individual animals (Cully 1993, Cully and Williams 2001). However, Barnes (1993) suggested hibernation may simply delay the onset of symptoms throughout all the colonies. Conversely, the Conservation Assessment also concludes that other environmental and human-caused factors could decrease the ability of populations to recover long-term.

Consequently, while some behavioral traits (*e.g.*, migratory abilities and hibernation) of white-tailed prairie dogs are often reported to buffer adverse effects of plague, the information is neither clear nor conclusive. For example, migration within complexes may promote recolonization of colonies previously impacted by plague; conversely, intercolony movement also may contribute to disease transmission, and isolated colonies are less likely to support sufficient immigration for long-term persistence of plague-affected colonies (Seglund *et al.* 2004).

In addition, the Conservation Assessment and Knowles (2002) raise concerns that white-tailed prairie dog

plague cycles (*i.e.*, epizootic, recovery, epizootic) result in successive population peaks that are progressively lower than the previous peak and that with each new epizootic, the loss of colonies from plague exceeds the rate of new colony establishment. This cycle of peaks and crashes is further supported by observations of frequent recurrence of plague in white-tailed prairie dog colonies (Cully 1993, Barnes 1993). The Conservation Assessment reports that colony recovery rates have been reported to occur within as little as 1–2 years (Anderson and Williams 1997), or within as much as 10 years (Cully and Williams 2001). Colonies affected by plague have shown varying recovery responses. The Conservation Assessment reports post-plague recovery occurring in Wyoming's Shirley Basin, Colorado's Wolf Creek, and Utah's Kennedy Wash. Conversely, some large colonies have continued to decline or remained at low numbers since the occurrence of plague, such as Wyoming's Meeteetse, Colorado's Little Snake, and Utah's Cisco. However, for most sites, historical data are not available to compare apparent colony recovery levels with their historical or pre-plague densities. In addition, and importantly, because white-tailed prairie dogs exist in smaller numbers than black-tailed prairie dogs, plague epizootics could have a more significant influence on their viability.

Regardless of social and behavioral factors, some of the largest white-tailed prairie dog complexes at Meeteetse, Cisco, and Little Snake have declined significantly as a result of plague, and have not fully recovered to their pre-plague abundance. In addition, the petition identifies the presence of plague in low-density and medium-density white-tailed prairie dog colonies. Other animals also can transmit plague between prairie dog colonies (Cully and Williams 2001). This suggests that many, if not all, colonies of white-tailed prairie dogs are vulnerable to plague regardless of size, degree of isolation, and density. The Conservation Assessment concludes that ''sylvatic plague has the potential to rise to the level of a threat to the continued existence of the species, but the threat is non-imminent'' and, ''concern over the long-term viability of white-tailed prairie dog populations is warranted.'' They also state that ''the role that plague has played and will play in the overall decline of white-tailed prairie dogs is a critical question for future management and research.''

Because of the lack of long-term data or a detailed understanding of plague and white-tailed prairie dog dynamics, both the petition and Conservation Assessment conclude that long-term monitoring over large areas is essential to determine population effects of the disease. The petition and Conservation Assessment provide the following examples of large colonies that declined because of confirmed or suspected plague with some level of population rebound in a couple of cases. Plague was suspected when colonies crashed within a short timeframe.

Little Snake Complex, Colorado—Some decline was suspected in 1983 (USFWS *et al.* 1995). Sylvatic plague was confirmed in 1994 in flea samples and in 1995 in coyote blood samples. Between 1994 and 1999, colony size declined 90 percent. The Conservation Assessment reports likely continued declines in 2002, but a possible small increase in 2003. However, drought-related declines in sagebrush and forbs also were noted in 2003; so, it is unclear if the noted small increase will continue.

Wolf Creek Complex, Colorado—From 1985 to 1987, populations west of Massadona were reduced to about 10 percent of their former abundance. Although partial recovery occurred between 1990 and 1993, declines have occurred since then and the population has not recovered to its pre-1985 abundance. In 2001, population numbers were estimated to be 40 percent lower than in 1993–1994 (Wolf Creek Work Group 2001). Although no reason for the decline is given, the petition cites a personal communication from E. Hollowed (BLM 2004) reporting sylvatic plague in the area since at least 1997.

Montrose County, Colorado—Declines have been noted in these colonies since 1978, but the role of plague is unclear. The petition reports declines may be a cumulative result of plague, shooting, and poisoning.

Colorado National Monument, Colorado—The petition sites a personal communication reporting that prairie dog populations in the area crashed after a 1976 plague epizootic. It is not known if any prairie dogs still inhabit the Monument.

Montana—The petition identifies seven white-tailed prairie dog colonies in Montana that were extirpated and cites personal communication with D. Flath attributing those extirpations to plague outbreaks.

Kennedy Wash Subcomplex, Utah—The petitioners report the white-tailed prairie dog population in this subcomplex undergoing major declines in 1999 due to plague. Personal communication from B. Bibles (Uinta Basin USU Extension Branch) was cited by the petitioners as stating that plague has continued in the area enzootically (constantly present in an animal community but only occurs in a small number of cases). The petition reports prairie dog densities declining from 5.4 dogs per ha (2.1 dogs per ha) in 1999 to 3.1 dogs per ha (1.2 dogs per ha) in 2001. The Conservation Assessment reports a subsequent population increase in 2002, followed by a significant decline in 2003.

Shiner Subcomplex, Utah—Surveys in Shiner Basin from 1997 to 2000 documented a decline from 47,551 prairie dogs in 1998 to 5,383 prairie dogs in 1999 (Seglund *et al.* 2004). Such a decline in a short period of time is characteristic of plague epizootic impacts on prairie dog populations. The petition notes some partial recovery in 2000. The Conservation Assessment describes surveys in 2002 and 2003 that show low densities and little, if any, population recovery.

Snake John Subcomplex, Utah—The petition documents possible population increases between 1989 and 2001, while the Conservation Assessment reports a significant population decline in 2003. The cause of the 2003 decline is not reported; however, it is reasonable to suspect plague given the colony's proximity to Kennedy Wash and the substantial decline in a short amount of time.

Cisco Complex, Utah—Between 1985 and 1992, transect counts show that prairie dog populations increased dramatically. Population declines, likely due to plague, were observed from 1998–2002. Complex remapping in 2002 yielded 1,085 ha (2,682 ac) of occupied habitat, apparently low relative to historic acreages (Seglund *et al.* 2004).

Dinosaur National Monument, Utah—The petition cites a personal communication from S. Petersburg estimating that a substantial plague-related decline occurred at the Monument colony between the late 1980s and early 1990s, but that this population may now be increasing. Specific data are not provided.

Meeteetse Complex, Wyoming—Plague epizootics swept through this complex four times between 1964 and 1985 (Clark *et al.* 1985, Ubico *et al.* 1988, Clark 1989). Between 1988 and 1997, plague resulted in the loss of 18,400 white-tailed prairie dogs, an estimated 72 percent decline in the complex (Biggins 2003b). This complex has experienced no significant recovery (Knowles 2002).

Shirley Basin Complex, Wyoming—The petition reports a 50 percent decline in occupied prairie dog habitat from 1990 to 2000, and an estimated 78

percent population decline (B. Oakleaf, pers. comm., as cited by Center for Native Ecosystems 2002). The WGFD conducted surveys of selected prairie dog colonies between 1992 and 2001 which indicated that white-tailed prairie dog abundance appeared to have decreased (Seglund *et al.* 2004). However, given recent increases, Grenier *et al.* (2003 as cited by Seglund *et al.* 2004) reported a 50 percent increase in occupied habitat from 1990 to 2004 over a different portion of the Shirley Basin complex (Seglund *et al.* 2004).

Kinney Rim, Wyoming—The Kinney Rim complex was first sampled in 1989 with 7,215 ha (17,828 ac) of occupied habitat reported. It was suspected that sylvatic plague was impacting the complex during the 1989 survey, although no attempts were made to confirm presence of plague. The area was partially inventoried, again, in 1993 suggesting an increase (Conway 1989 and Albee 1993, as cited in Seglund *et al.* 2004). The petition cites personal communications from B. Luce documenting substantial declines at this complex by 1995. No more recent conclusive data are reported.

Polecat Bench, Wyoming—Population numbers and accurate occupied acreage data are unavailable for this complex. A personal communication from D. Saville (Cody BLM Office) in the petition concluded that the complex experienced major plague-caused declines between 1979 and 1981. According to the petition, recovery at this site has been slow, similar to the post plague population response reported at the Meeteetse Complex.

The petitioners assert that tularemia is another pathogen that can cause disease-related declines in white-tailed prairie dog populations (Davis 1935). However, there is little data on its prevalence. Long-term impacts of this disease on white-tailed prairie dog populations are unknown (Barnes 1993).

West Nile virus is a recent disease with unknown ramifications for white-tailed prairie dog populations. A black-tailed prairie dog was reported to have died of this disease in Boulder, Colorado, in 2003 (Seglund *et al.* 2004). We are unaware of any confirmed incidences of West Nile virus in white-tailed prairie dogs.

Because of the lack of long-term data or an understanding of plague and white-tailed prairie dog dynamics, both the petition and Conservation Assessment conclude that long-term monitoring over large areas is essential to determine population effects of the disease. On this basis, we believe the petition, the Conservation Assessment, and other information readily available to us do not provide substantial scientific information to indicate that disease may be a threat to the viability of the white-tailed prairie dog. We make this finding while recognizing that the source materials are primarily from white-tailed prairie dog complexes inventoried for black-footed ferret recovery. Because the black-footed ferret recovery work identified only those complexes meeting black-footed ferret prey needs (*i.e.*, generally large in area, and densely occupied by prairie dogs), there is a legitimate concern that the data may not accurately reflect prairie dog trends at all colonies throughout the prairie dog's range. As noted above however, the information regarding the relationship of prairie dog colony size and prairie dog behavior to plague susceptibility is not clear.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition claims that white-tailed prairie dogs have been negatively affected by the lack of Federal and State regulations, to control poisoning, shooting, or habitat destruction. The petition also asserts that current State and Federal regulations do not adequately address the potential impacts of oil, gas, and mineral extraction on white-tailed prairie dog habitat (see factor A), nor do they provide adequate mitigation.

All BLM Field Offices whose jurisdictions include black-footed ferret reintroduction areas will have stipulations related to black-footed ferret habitat protection. While these stipulations are not intended to address white-tailed prairie dog conservation per se, they serve to protect some white-tailed prairie dog habitat because the white-tailed prairie dog is the primary food source available to black-footed ferrets. All black-footed ferrets in the wild have a designation of ''experimental, non-essential'' pursuant to section 10(j) of the Act. Experimental, non-essential populations are treated as proposed species for section 7 consultation purposes, which means that consultation with the Service is only required if the project is likely to jeopardize the continued existence of the species although generally federal agencies routinely consult with the we on species proposed for listing and 10(j) populations.

In addition, black-footed ferret reintroductions have occurred in only three white-tailed prairie dog complexes including Coyote Basin (Utah), Wolf Creek (Colorado), and Shirley Basin (Wyoming). All other white-tailed prairie dog colonies occur outside of ferret reintroduction areas and thus would see only limited benefit from ferret conservation measures such as ferret survey requirements in potential ferret habitat as defined by prairie dog colony size.

In Colorado, the white-tailed prairie dog range occurs within the jurisdiction of six BLM field offices, with four of these field offices having no stipulations specific to white-tailed prairie dog for oil and gas development in white-tailed prairie dog habitat (R. Sell, BLM, pers. comm., as cited by Seglund *et al.* 2004). However, a number of general stipulations on such development will protect white-tailed prairie dog habitat.

In Utah, the white-tailed prairie dog range occurs within the jurisdiction of the BLM's Vernal Field Office, which includes Coyote Basin Black-footed Ferret Reintroduction Area, which has stipulations related to black-footed ferret habitat protection but does not specifically address white-tailed prairie dog conservation (B. Zwetzig, BLM, pers. comm., as cited by Seglund *et al.* 2004). The white-tailed prairie dog range also occurs within the jurisdiction of the Price and Moab Field Offices, which do not have directives with regard to white-tailed prairie dog management. However, both of these field offices are currently revising their Land Use Plans and the new plans will consider the white-tailed prairie dog in special status species alternatives (S. Madsen, P. Riddle, BLM, pers. comm., as cited by Seglund *et al.* 2004), which would carry with it protections similar to those for species protected under the ESA.

The Montana policy regarding white-tailed prairie dogs is related to potential black-footed ferret reintroductions (J. Parks, BLM, pers. comm., as cited by Seglund *et al.* 2004). ''Prior to surface disturbance, prairie dog colonies and complexes of 32 ha (80 ac) or greater in size will be examined to determine the absence or presence of black-footed ferrets.'' Currently Montana has only a small amount of active white-tailed prairie dog habitat and no overlap with oil and gas leasing.

The BLM in Wyoming has declared the white-tailed prairie dog a BLM sensitive species. This designation carries with it, through regulation, habitat and species protections similar to those afforded candidate species under the Act. There are eight BLM resource areas in Wyoming within the range of the white-tailed prairie dog, and all of these resource areas are conducting some form of prairie dog management. The Wyoming BLM is currently revising its Resource Management Plans (RMP) in the white-

tailed prairie dog range. These RMP revisions are primarily driven by a recent emphasis on oil and gas development activity, and are or will be addressing white-tailed prairie dogs. The BLM also has had nominations submitted by several environmental groups for the designation of prairie dog ''areas of critical environmental concern.'' A BLM Statewide, programmatic, biological evaluation is being prepared for white-tailed prairie dogs, the results of which will be incorporated into RMPs.

The Conservation Assessment concludes that many State Field Offices in Wyoming, Utah, Colorado, and Montana currently do not consider the white-tailed prairie dog in oil and gas development unless it is associated with black-footed ferret reintroduction efforts. Because of this, most current BLM plans throughout the range of the white-tailed prairie dog do not address white-tailed prairie dog species-specific needs, but addresses white-tailed prairie dog as black-footed ferret habitat. In addition, they do not address maintaining habitat for expansion and shifts in occurrence outside of currently mapped colonies and they address impacts at a colony level rather than a complex or landscape level. Finally, RMPs do not address the impact of road development and the potential for an increase in shooting/direct take of white-tailed prairie dog as a result of oil and gas development. Colorado and Wyoming allow yearlong shooting on public lands, except for the shooting closure on the 1,917 ha (4,737 ac) conservation easement at Shirley Basin, Wyoming.

The Petroleum Association of Wyoming asserts that a number of lease stipulations and conditions designed to protect big game species, mountain plover (*Charadrius montanus*), raptors, black-footed ferrets, sage-grouse (*Centrocercus urophasianus*), and other threatened, endangered and candidate species also benefit white-tailed prairie dog (Bower, in litt. 2004). Specifically, it noted that oil and gas surface activity is banned on designated mountain plover habitat from mid-April through early July unless surveys show that no plovers are present (Bower, in litt. 2004). Oil and gas surface activity is banned within a 0.8 to 1.6 km (0.5 to 1.0 mi) radius of active raptor nests on Federal lands during the raptors breeding and young-rearing seasons (February through July depending on the species) (Bower, in litt. 2004). Further, white-tailed prairie dog complexes in excess of 81 ha (200 ac) are off limits to oil and gas development until black-footed ferret surveys have been conducted and towns are cleared (Bower, in litt. 2004). Other lease stipulations prohibit drilling between March 1 and June 30 to protect sage-grouse breeding, nesting, and brood-rearing. Finally, surface disturbances are prohibited from November 15 and April 30 to protect wintering big game animals. These restrictions may benefit white-tailed prairie dog populations in some instances, if they are co-located.

The petition asserts that unregulated poisoning alone has reduced prairie dog abundance in Wyoming by an estimated 75 percent since 1915 (Campbell and Clark 1981). Although large-scale poisoning may have occurred in the past, toxicant control is not considered a significant factor shaping white-tailed prairie dog population dynamics. This factor is discussed in more detail below under factor E. Limited poisoning is still permitted on private lands adjacent to agricultural lands or to control expanding colonies. The Conservation Assessment recommends the use of incentive programs to encourage land owners to minimize the use of toxicants to control white-tailed prairie dog populations.

The petitioners and the Conservation Assessment assert that recreational shooting in April, May, and June may have greatest population level impacts because pregnant and lactating females and young-of-the-year are most vulnerable (see Factor B). Shooting has the potential to locally reduce population density and could slow or preclude recovery rates of colonies reduced by plague or other disturbances by being an additive factor to mortality (Seglund *et al.* 2004). Montana has implemented a year-round shooting closure on white-tailed prairie dogs, and Utah recently implemented an April 1–June 15 seasonal shooting closure on public lands (Seglund *et al.* 2004). In Coyote Basin, Utah, a year-round shooting closure was established to improve black-footed ferret habitat. In Shirley Basin/Medicine Bow Management Area in Wyoming, permanent shooting closure was implemented on a conservation easement of 1,917 ha (4,737 ac). No shooting closures have been adopted on any white-tailed prairie dog habitat in Colorado. No shooting is permitted on National Wildlife Refuges. The Conservation Assessment notes that if shooting can be managed to regulate populations and maintain them at a threshold density, it may be a useful management tool for prairie dog conservation.

Current management status varies by State. Colorado currently has no management or conservation plan for white-tailed prairie dogs and they are not included on the State Species of Concern or State threatened and endangered list.

In January 2002, the Montana Prairie Dog Working Group released the ''Conservation Plan for Black-tailed and White-tailed Prairie Dogs in Montana.'' The stated goal of the plan is to ''provide for management of prairie dog populations and habitats to ensure the long-term viability of prairie dogs and associated species.'' Accomplishments to date that have benefited white-tailed prairie dogs include the reclassification of white-tailed prairie dogs as 'non-game wildlife species in need of management,' the application of a year-round shooting closure on white-tailed prairie dogs occupying Federal lands, and a draft Environmental Assessment anticipating translocation of prairie dogs from Montana and Wyoming sites to formerly occupied colonies. White-tailed prairie dogs are also listed on the Species of Concern List compiled by the Montana Natural Heritage Program and Montana Fish Wildlife and Parks and used to prioritize research and management needs among nongame wildlife species.

In 2003, Utah Department of Wildlife Resources added the white-tailed prairie dog to the agency's Sensitive Species List. The list is intended to stimulate development and implementation of management actions to precluded Federal listing of these species under the ESA. However, at this time Utah does not have a management or conservation plan for the white-tailed prairie dog.

The white-tailed prairie dog is classified as a Species of Special Concern by the Wyoming Game and Fish Department. Currently, Wyoming does not have a management or conservation plan for the white-tailed prairie dog but this designation does carry certain protections with it.

In this finding we have addressed the regulatory concerns as they relate to a number of factors, however, given that these issues have not been identified as significant threats, there is no immediate need to consider whether efforts to regulate them are adequate.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The petition and Conservation Assessment recount a long history of rodent and prairie dog poisoning campaigns in the United States. Black-tailed prairie dogs were the main focus of this eradication. White-tailed prairie dogs were impacted directly and indirectly. In the 1970s, several toxicants used to control prairie dog

populations were banned. Large-scale chemical control programs also were phased out. Prairie dog poisoning still occurs on private and State lands range wide, but at a much reduced rate and with less effective poisons and in specialized circumstances. The Conservation Assessment states that poisoning is banned from BLM lands, and 55 percent of white-tailed prairie dog habitat is on BLM land.

Invasive weeds, especially cheatgrass (*Bromus tectorum*), are identified by the petitioners as reducing forage quality for white-tailed prairie dogs. Cheatgrass out-competes other native, plants and provides limited seasonal forage for white-tailed prairie dogs (Knapp 1996). Furthermore, cheatgrass alters fire regimes, fostering an environment in which frequent fires further proliferate and maintain cheatgrass (Young and Allen 1997, Hull 1965, as cited in Center for Native Ecosystems 2002). Cheatgrass establishment depends on the level of disturbance in a plant community. Consequently, overgrazing of an area, dirt roads, activities that are associated with natural resource extraction and off-highway vehicle use can disturb a landscape and introduce invasive noxious weeds.

Drought is another factor mentioned by the petition that may negatively impact white-tailed prairie dogs. White-tailed prairie dogs exist in arid landscapes. During very dry years, vegetation is less abundant for prairie dogs. Prairie dogs obtain most of their water requirements through vegetation, and may become water-stressed if sufficient succulent vegetation is unavailable (Stockard 1929, Seglund *et al.* 2004). Furthermore, less abundant resources result in lower overall body mass (Beck 1994). Beck (1994) conducted research on comparing white-tailed prairie dog use of watered and unwatered plots. Beck (1994) found that the watered plots were the higher quality habitats and consequently promoted higher weaning success for both adult and yearling females. Since prairie dogs have evolved with occurrences of drought, they have developed means of dealing with the shortage of resources such as a lower litter size or earlier initiation of hibernation to conserve energy. However, prolonged drought could lower overall body condition for white-tailed prairie dogs potentially affecting over-winter survival rates. In addition, drought may further exacerbate the impacts of other factors, such as non-native sylvatic plague.

Both the petition and the Conservation Assessment identify climate change, environmental stochastic events, and other human disturbances as other possible impacts, but little additional information or analysis is provided (Center for Native Ecosystems 2002, Seglund *et al.* 2004).

Based on the current information, it does not appear that there is substantial scientific information to indicate that natural and manmade factors threaten the continued existence of the white-tailed prairie dogs throughout a large portion of their range.

Finding

We have reviewed the petition, the Conservation Assessment, and other information available in our files. Based on our review of this information, we find there is not substantial scientific or commercial information to indicate that listing the white-tailed prairie dog may be warranted at this time. Both the petition and the Conservation Assessment note that plague is the most important factor effecting white-tailed prairie dog population dynamics and the long-term viability of the species. However, the lack of long-term data or a detailed understanding of plague and white-tailed prairie dog dynamics indicate that substantial information is not available to determine that plague is a threat which may warrant the listing of this species. Plague (which occurs across the entire range of the species) and the conditions under which white-tailed prairie dogs are affected, both epizootically and enzootically, population responses to plague, and ensuing long-term population viability, require further evaluation. Likewise, the impacts of present and threatened destruction, modification, or curtailment of habitat are inadequately known to constitute substantial information that listing may be warranted.

Although we will not be commencing a status review in response to this petition, we continue to monitor the species' population status and trends, potential threats to the species, and ongoing management measures that may be important with regard to the conservation of the white-tailed prairie dog throughout its range.

References Cited

A complete list of our references cited herein is available upon request from the Utah field office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 2, 2004.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 04–24878 Filed 11–8–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 216
Tuesday, November 9, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Thursday, November 18, 2004. The meeting will be held in the Dome Room of the Rotunda on The Lawn at the University of Virginia, Charlottesville, Virginia, beginning at 1 p.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome.

II. Preserve America Community Recognition and Chairman's Awards Presentation.

III. Preserve America Program Development.

IV. Report of the Executive Committee.

A. ACHP FY 2006 Budget Request.

V. Report of the Preservation Initiatives Committee.

A. Heritage Tourism Initiatives.

B. National Heritage Areas Policy Legislation.

VI. Report of the Federal Agency Programs Committee.

A. Interstate Highway System Exemption.

B. Navy/Air Force Wherry Capehart Housing Program Comment.

C. Review of Federal Agency Section 3 Reports.

D. Review of Nationwide Programmatic Agreements.

VII. Report of the Communications, Education, and Outreach Committee.

A. 2005 Preserve America Presidential Awards Program.

VIII. Report of the Department of Defense Task force.

A. Department of Defense Historic Properties Policy.

IX. Report of the Archeology Task Force.

X. Chairman's Report.

A. ACHP Alumni Foundation.

B. Legislative Issues.

1. ACHP Reauthorization Legislation.

2. Surface Transportation Reauthorization Legislation.

3. Department of Veterans Affairs ''CARES'' Legislation.

C. Native American Advisory Group.

D. ACHP—National Trust Award to NPS—Alliance of Heritage Areas.

XI. Executive Director's Report.

XII. New Business.

XIII. Adjourn.

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #809, Washington, DC 20004.

Dated: November 4, 2004.

John M. Fowler,

Executive Director.

[FR Doc. 04–24946 Filed 11–8–04; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–038N]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice announces that the National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on November 16–17, 2004, to review and discuss the following issues: (1) The Food Safety and Inspection Service (FSIS) Technical Service Center (TSC): How is the TSC doing in fulfilling its mission to provide technical guidance to industry? How can it improve in providing such guidance? What has it done well? (2) How can FSIS efficiently share information through outreach and training of our constituent groups? FSIS is dedicated to effective and targeted outreach and training. How can the Agency improve its outreach to external groups, plants, states and constituents? and, (3) Developing a data depository to help FSIS anticipate food borne hazards: How can FSIS facilitate Agency acquisition of microbiological testing data from industry, academia and other constituent groups? Three subcommittees will also meet on November 16, 2004, to work on the issues discussed during the full committee session.

DATES: The full Committee will hold a public meeting on Tuesday, November 16 and Wednesday, November 17, 2004, from 8:30 a.m. to 2:30 p.m. Subcommittees will hold open meetings on Tuesday, November 16, 2004, from 3 p.m. to 6 p.m.

ADDRESSES: All Committee meetings will take place at the Hilton Alexandria Old Town Hotel, 1767 King Street, Alexandria, VA 22314. A meeting agenda is available on the Internet at *http://www.fsis.usda.gov/OPPDE/NACMPI*. FSIS welcomes comments on the topics to be discussed at the public meeting. Comments may be submitted by mail, including floppy disks or CD-ROM's, or by hand delivery to: Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton

Annex, Washington, DC 20250. Comments may also be sent by facsimile to (202) 205–0381. All submissions received must include the Agency name and docket number 04–038N.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2004_Notices_Index/.*

FOR FURTHER INFORMATION CONTACT: Robert Tynan for technical information at (202) 690–6520 or e-mail *robert.tynan@fsis.usda.gov* and Sonya L. West for meeting information at (202) 690–1079, fax (202) 690–6519, or e-mail *sonya.west@fsis.usda.gov.* Persons requiring a sign language interpreter or other special accommodations should notify Ms. West no later than November 12, 2004, at the above numbers or by e-mail.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2003, the Secretary of Agriculture renewed the charter for the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the Federal and State meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, 301(a)(3), 301(a)(4), and 301(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3), 661(a)(4), and 661(c)) and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(a)(4), 454(c), 457(b), and 460(e)).

The Administrator of FSIS is the chairperson of the Committee. Membership of the Committee is drawn from representatives of consumer groups, producers, processors and marketers from the meat and poultry industry, state government officials and academia. The current members of the NACMPI are: Ms. Deanna Baldwin, Maryland Department of Agriculture; Dr. Gladys Bayse, Spelman College; Dr. David Carpenter, Southern Illinois University; Dr. James Denton, University of Arkansas; Mr. Darin Detwiler, Lake Washington School District; Dr. Kevin Elfering, Minnesota Department of Agriculture; Ms. Sandra Eskin, American Association of Retired Persons; Mr. Michael Govro, Oregon Department of Agriculture; Dr. Joseph Harris, Southwest Meat Association; Dr. Jill Hollingsworth, Food Marketing Institute; Dr. Alice Johnson, National Turkey Federation; Mr. Michael Kowalcyk, Safe Tables Our Priority; Dr. Irene Leech, Virginia Citizens Consumer Council; Mr. Charles Link, Cargill Meat Solutions; Dr. Catherine Logue, North Dakota State University; and Mr. Mark Schad, Schad Meats.

The Committee has three subcommittees to deliberate on specific issues and make recommendations to the Committee.

All interested parties are welcome to attend the meetings and to submit written comments and suggestions concerning Committee issues. The comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Members of the public will be required to register before entering the meeting.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, farm and consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done in Washington, DC on November 3, 2004.

Richard Van Blargan,

Acting Administrator.

[FR Doc. 04–24882 Filed 11–8–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by Shakeproof Assembly Components Division of Illinois Tool Works, Inc. (Shakeproof), a domestic interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain helical spring lock washers from the People's Republic of China. The period of review (POR) is October 1, 2002, through September 30, 2003. We preliminarily find that the cash deposit rate for this review is *de minimis*. Upon completion of this review, the Department will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise that was exported by Hangzhou Spring Washer Co., Ltd. (also known as Zhejiang Wanxin Group, Ltd.) (collectively, Hangzhou), and entered during the POR. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 9, 2004.

FOR FURTHER INFORMATION CONTACT: Marin Weaver, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2336.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 1993, the Department published the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) (58 FR 53914), as amended on November 23, 1993 (58 FR 61859). On October 1, 2003, the Department published a notice of opportunity to request an administrative review of this order (68 FR 56618). On October 20, 2003, in accordance with 19 CFR 351.213(b)(1), Shakeproof requested that the Department conduct an administrative review of Hangzhou, a producer/exporter of HSLWs from the PRC.

The Department published a notice of initiation of this administrative review on November 28, 2003 (68 FR 66799). On June 25, 2004, the Department extended the due date for the preliminary results of this review to November 1, 2004. *See Certain Helical Spring Lock Washers from the People's Republic of China: Notice of Extension of Time Limit of Preliminary Results of Antidumping Administrative Review*, 69 FR 35583 (June 25, 2004). Hangzhou submitted timely responses to all of the Department's requests for information in this review.

Scope of the Order

The products covered by the order are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat–treated or non–heat-treated, plated or non–plated, with ends that are off–line. HSLWs are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to the order are currently classifiable under subheading 7318.21.0030 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Separate Rates Determination

The Department has treated the PRC as a non–market-economy (NME) country in all past antidumping duty investigations and administrative reviews. *See, e.g., Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004). A designation as an NME country remains in effect until it is revoked by the Department. See section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act).

It is the Department's standard policy to assign all exporters of subject merchandise subject to review in a NME country a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company–specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or the financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. (*See Silicon Carbide*, 59 FR at 22587, and *Sparklers*, 56 FR at 20589.)

In May 1999 Hangzhou was sold at auction to five individuals and became a limited liability company. Hangzhou has placed on the record documents to demonstrate the absence of *de jure* control including its list of shareholders, business license, and the Company Law. Other than limiting Hangzhou to activities referenced in the business license, we found no restrictive stipulations associated with the license. In addition, in previous cases the Department has analyzed the Company Law and found that it establishes an absence of de jure control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial–Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, 54474 (October 24, 1995). We have no information in this segment of the proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for Hangzhou.

With regards to *de facto* control, Hangzhou reported the following: (1) it sets prices to the United States through negotiations with customers and these prices are not subject to review by any government organization; (2) it does not coordinate with other exporters or producers to set the price or determine to which market companies sell subject merchandise; (3) the Chamber of Commerce does not coordinate the export activities of Hangzhou; (4) Hangzhou's general manager has the authority to contractually bind the company to sell subject merchandise; (5) the board of directors has appointed the general manager; (6) there is no restriction on its use of export revenues; (7) Hangzhou's management decides how to dispose of the profits and Hangzhou has never had a loss. Additionally, Hangzhou's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of Hangzhou's questionnaire responses reveals no other information indicating governmental control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over Hangzhou's export functions.

In the instant administrative review, we find an absence of government control, both in law and in fact, with respect to Hangzhou's export activities according to the criteria identified in Sparklers and an absence of government control with respect to the additional criteria identified in *Silicon Carbide*. Therefore, we have assigned Hangzhou a separate rate.

Export Price

Because Hangzhou sold the subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) and use of a constructed–export-price methodology is not otherwise indicated, we have used export price in accordance with section 772(a) of the Act.

We calculated export price based on the FOB price to unaffiliated purchasers. From this price, we deducted amounts for foreign inland freight and brokerage and handling pursuant to section 772(c)(2)(A) of the Act. We valued these deductions using surrogate values. We selected India as the primary surrogate country for the

reasons explained in the ''Normal Value'' section of this notice.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine normal value (NV) using a factors–of-production methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home–market prices, third–country prices, or constructed value and no party has argued otherwise, we calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Because we are using surrogate country factors–of-production prices to determine NV, section 773(c)(4) of the Act requires that the Department use values from a market–economy (surrogate) country that is at a level of economic development comparable to that of the PRC and is a significant producer of comparable merchandise. We have determined that India, Indonesia, Sri Lanka, the Philippines, Morocco, and Egypt are market–economy countries at a comparable level of economic development to that of the PRC. (For a further discussion of our surrogate selection, see the July 15, 2004, memorandum entitled Request for a List of Surrogate Countries which is available in the Department's Central Records Unit, room B099, of the main Commerce building (CRU)). In addition, we have found that India is a significant producer of comparable merchandise, *i.e.*, fasteners. *See* Memorandum to File from Paul Stolz, dated November 1, 2004, which is on file in the CRU. As in the investigation and the nine previous reviews of this order, we have chosen India as the primary surrogate country. Thus, we have used Indian prices to value the factors of production.

We selected, where possible, publicly available values from India which were average non–export values, representative of a range of prices within the POR or most contemporaneous with the POR, product–specific, and tax–exclusive. Also, where we have relied upon import values, we have excluded imports from South Korea, Thailand, and Indonesia. The Department has found that these countries maintain broadly available, non–industry-specific export subsidies and that the existence of these subsidies provides sufficient reason to believe or suspect that export prices from these countries are distorted. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum. Our practice of excluding subsidized prices has been upheld in *China National Machinery Import and Export Corporation v. United States and the Timken Company*, 293 F. Supp. 2d 1334 (CIT 2003).

Steel Value

During the POR, Hangzhou imported a portion of its steel input (carbon steel wire rod (CSWR)) from market economies and paid for this input in a market–economy currency. In the 2001–2002 administrative review, we disregarded certain steel import prices reported by Hangzhou because there was ''reason to believe or suspect'' the steel benefitted from subsidies and have continued to do so in this review. For further discussion of this issue, *see* Memorandum to the File, Hang Zhou Spring Washer Plant, also known as Zhejiang Wanxin Group Co., Ltd., Calculation Memorandum at 4 (November 1, 2004). Pursuant to 19 CFR 351.408(c)(1) we have used Hangzhou's average purchase price for CSWR imported from a market–economy country during the POR to value CSWR in calculating Hangzhou's normal value.

Material Inputs

We calculated a surrogate value for steel scrap using the value of imports of steel scrap into India based on information from the Monthly Statistics of the Foreign Trade of India - Imports (MSFTI). In computing this value, we have taken into account that we have made final affirmative countervailing duty determinations on steel products from numerous countries. Therefore, we have not included values for imports of steel scrap into India from Belgium, Canada, France, Germany, and the United Kingdom (as well as South Korea, Thailand and Indonesia).

The remaining inputs are addressed below:

- To value hydrochloric acid used in the production of HSLWs, we used per–kilogram import values obtained from *Chemical Weekly*. We adjusted this value to account for freight costs incurred between the supplier and Hangzhou.
- To value all other the chemicals used in the production of HSLWs, we used per–kilogram import values obtained from the MSFTI. We also adjusted these values to account for freight costs incurred between the supplier and Hangzhou.
- To value plating, we used a March 14, 2003, price quote supplied by Shakeproof in the 2001–2002 administrative review. We adjusted the value to reflect inflation using the wholesale price index (WPI) published by the International Monetary Fund (IMF).
- To value coal, we used a per–kilogram value obtained from the MSFTI. We also made adjustments to account for freight costs incurred between the supplier and Hangzhou.
- To value electricity, we used the 1999/2000 electricity price data from the 2001–2002 *Annual Report on the Working of State Electricity Boards and Electricity Departments* published by the Planning Commission (Power and Energy Division) Government of India May, 2002. We adjusted the value to reflect inflation using the electricity sector–specific inflation index published in the *Reserve Bank of India (RBI) Bulletin*.
- To value water, we used the *Second Water Utilities Data Book for the Asian and Pacific Region* published by the Asian Development Bank in 1997. We adjusted the value to reflect inflation using the WPI published by the RBI.
- For labor, we used the regression–based wage rate for the PRC in ''Expected Wages of Selected NME Countries,'' located on the Internet at http://ia.ita.doc.gov/wages/index.html.
- For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, we used information from the January 1997 *RBI Bulletin* report entitled ''Combined Income, Value of Production, Expenditure and Appropriation Accounts, Industry Group–Wise, 1990 - 91 to 1992 - 93 (contd.).'' From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (ML&E) costs, SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture), and the profit rate as a percentage of the cost of manufacture plus SG&A.
- For packing materials, we used the per–kilogram values obtained from the MSFTI. Where necessary, we adjusted these values to reflect inflation using the WPI published by the RBI. We also made adjustments to account for freight

costs incurred between the PRC supplier and Hangzhou.

- To value foreign brokerage and handling, we used information reported in the *Final Determination of Sales at Less Than Fair Value; Certain Hot–Rolled Carbon Steel Flat Products from India*, 67 FR 50406 (October 3, 2001). We adjusted this value to reflect inflation using the WPI published by the RBI.
- To value truck freight, we used the freight rates published in the *Great Indian Bazaar* at http://www.infobanc.com/logtruck.htm. We obtained distances between cities from the following website: http://www.mapsofindia.com. We deflated this value using the WPI published by the RBI.

For a complete description of the factor values we used, *see* ''Memorandum to File: Factor Values Used for the Preliminary Results of the 2002–2003 Administrative Review,'' dated November 1, 2004 (Factors Memorandum), a public version of which is available in the Public File of the CRU.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time Period	Margin (percent)
Hang Zhou Spring Washer Co. Ltd./Zhejiang Wanxin Group, Ltd.	10/1/02–9/30/03	0.00

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.

Further, we would appreciate it if parties submitting written comments would provide an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise. We have calculated each importer's duty–assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. Where the assessment rate is above *de minimis*, the importer–specific rate will be assessed uniformly on all entries made during the POR.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for Hangzhou, which has a separate rate, the cash deposit rate will be the company–specific rate established in the final results of review; (2) for all other PRC exporters, the cash deposit rate will be the PRC rate, 128.63 percent, which is the ''All Other PRC Manufacturers, Producers and Exporters'' rate from the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China*, 58 FR 48833 (September 20, 1993); and (3) for non–PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–24952 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, application no. 85–10A018.

SUMMARY: The U.S. Department of Commerce has issued an amended Export Trade Certificate of Review to the U.S. Shippers Association (''USSA'') on October 27, 2004. The original Export Trade Certificate of Review No. 85–00018 was issued to USSA on June 3, 1986, and announced in the **Federal Register** on June 9, 1986, (51 FR 20873). The previous amendment (No. 85–9A018) was issued to USSA on July 2, 2001, and announced in the **Federal Register** July 9, 2001, (66 FR 35773).

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2004).

Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by

the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

USSA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l) (2004)): Bayer CropScience, Research Triangle Park, North Carolina (Controlling Entity: Bayer Corporation, Bayer CropScience AG, D–40789 Monheim am Rhein, Germany); ConocoPhillips, Borger, Texas; and Solvay Chemicals, Inc., Houston, Texas (Controlling Entity: Solvay America, Inc., Houston, Texas).

2. Change the listing of the following Members of the Certificate to reflect corporate organizational changes: ''Aventis Crop Science, USA LP'' to read ''Bayer CropScience'' (Aventis Crop Science was acquired by Bayer Corporation); ''Phillips Petroleum Company'' to read as ''ConocoPhillips'' (Phillips Petroleum Company merged with Conoco, Inc.); and ''Solvay Minerals, Inc.,'' to read as ''Solvay Chemicals, Inc.'' (Solvay Minerals, Inc., combined with Solvay Interox, and Solvay Performance Chemicals to form Solvay Chemicals, Inc.).

3. Delete the following companies as Members of the Certificate: Aventis Crop Science, USA LP, Research Triangle Park, North Carolina (Controlling Entity: Aventis Crop Science Holding SA, 69009 Lyon, France); Phillips Petroleum Company, Bartlesville, Oklahoma; and Solvay Minerals, Inc., Houston, Texas (Controlling Entity: Solvay S.A., Brussels, Belgium).

The effective date of the amended certificate is May 4, 2004. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: November 3, 2004.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. 04–24881 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Tuesday, November 30, 2004 from 8:30 a.m. to 3 p.m. The Advanced Technology Program Advisory Committee is composed of nine members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an ATP and competition update, ATP/Offsite Comments, Funding Gaps: A Perspective from Partners and an open discussion. A discussion scheduled to begin at 1 p.m. and to end at 3 p.m. on November 30, 2004, on ATP budget issues will be closed. Agenda may change to accommodate Committee business. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Carolyn Peters no later than Tuesday, November 23, 2004, and she will provide you with instructions for admittance. Ms. Peters's e-mail address is *carolyn.peters@nist.gov* and her phone number is (301) 975–5607.

DATES: The meeting will convene Tuesday, November 30, 2004, at 8 a.m. and will adjourn at 3 p.m. on Tuesday, November 30, 2004.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1000, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 24, 2003, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions.

Dated: November 4, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–24942 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 040910260–4260–01]

Solicitation of Letters of Interest to Form Participating Research Teams at the NIST Center for Neutron Research

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) Center for Neutron Research (NCNR) announces its intent to form partnerships, called ''Participating Research Teams'' (PRT's), to develop and apply advanced cold and thermal neutron beam measurement capabilities at the NCNR to assist crucial and timely U.S. R&D directed toward the production of next-generation fuel cells, hydrogen storage systems, and related materials and components. The NCNR/NIST is therefore soliciting letters of interest in forming PRT's, which will be open to one or more U.S. companies, universities, or government agencies. Participation by the NCNR/NIST is permissible if desired by the PRT and the NCNR/NIST.

DATES: Letters of interest will be received on an ongoing basis until further notice.

ADDRESSES: Interested parties should send letters to Dr. Patrick D. Gallagher, Director, NIST Center for Neutron Research, 100 Bureau Drive,

Gaithersburg, MD 20899–8560, or via e-mail to *Patrick.Gallagher@nist.gov.*

SUPPLEMENTARY INFORMATION: The NIST Center for Neutron Research (NCNR), which is located at the National Institute of Standards and Technology in Gaithersburg, MD, intends to form partnerships, called ''Participating Research Teams'' (PRT's), to develop and apply advanced cold and thermal neutron beam measurement capabilities at the NCNR to assist crucial and timely U.S. R&D directed toward the production of next-generation fuel cells, hydrogen storage systems, and related materials and components. The partnership agreements will be based upon the statutory technology transfer authorities available to NIST, including the Federal Technology Transfer Act. Under these partnerships, new or existing NCNR neutron-imaging and neutron-scattering instrumentation, which are uniquely sensitive to the transport, behavior, and nanoscale properties of hydrogen and hydrogenous materials, would be developed or upgraded and modified to permit the study of critical materials and devices under conditions that are directly relevant to their use and performance in technological applications.

Organizations participating in a PRT would share the costs of developing and constructing neutron instrumentation and their subsequent operation. In return, PRT members would share access to a portion of the total time available on the capabilities developed under the partnership. At the same time, at least 25% of the total time would be made available to non-PRT U.S. organizations on a competitive, merit-based basis.

The modes of PRT access could be tailored for either individual or joint research, and the subsequent data would be made available to the U.S. science and technology community through open publication in archived and peer-reviewed journals, or in publicly available reports. Proprietary research would require separate approval and the payment of suitable charges by the partnership organizations to assure full cost recovery to the Government, including a commensurate share of the operating expenses of the NCNR.

PRT's will be open to one or more U.S. companies, universities, or government agencies. It is anticipated that PRT agreements will be established for a three-year period, with renewal subject to the requirements and interests of the partnership and the NIST/NCNR. Proposals for PRT's will be evaluated by an internal panel of NCNR/NIST staff on the basis of technical merit, level of effort, and the statutory mission of NIST and final approval of PRT agreements will be made by the Director, NCNR.

Dated: November 3, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–24941 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice; correction.

SUMMARY: The Department of Commerce published a document in the **Federal Register** of November 3, 2004, concerning the National Sea Grant Review Panel's notice of public meeting. The document contained an incorrect meeting location.

FOR FURTHER INFORMATION CONTACT: Dr. Francis M. Schuler, 301–713–2445.

Correction

In the **Federal Register** of November 3, 2004, in FR Doc. 04–24538, on page 64033, in the first column, correct the **ADDRESSES** caption to read: On November 17th, The Churchill Hotel, 1914 Connecticut Avenue, Northwest, Washington, DC 20009. On November 18th, Sea Grant Association Office, 1201 New York Avenue, Northwest, 4th Floor Conference Room, Washington, DC 20005.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 04–24909 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110204A]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene public hearings regarding a change to the preferred management alternative for consideration under Action 5 in Amendment 6 to the Shrimp Fishery Management Plan (FMP). Action 5 in Amendment 6 proposes the requirement for a Federal penaeid (white, pink, and brown) shrimp permit in order to fish for or possess penaeid shrimp in the South Atlantic Exclusive Economic Zone (EEZ). Public hearings regarding other proposed management actions in Amendment 6 to the Shrimp FMP have been completed.

DATES: The hearing dates are:

1. Monday, November 22, 2004, beginning at 6 p.m. in Charleston, SC.

2. Monday, December 6, 2004, beginning at 6 p.m. in Atlantic Beach, NC.

Written comments, including e-mail comments, will be accepted until 5 p.m. on December 6, 2004.

ADDRESSES: The hearing locations are:

1. Hampton Inn and Suites, 678 Citadel Haven Drive, Charleston, SC 29414; telephone: 843–573–1200; and

2. Sheraton Atlantic Beach Hotel, 2717 W. Fort Macon Road, Atlantic Beach, NC 28512; telephone: 800–624–8875 or 252–240–1155.

Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699. Comments may also be submitted via e-mail to *shrimpcomments@safmc.net.*

Copies of the public hearing document are available by contacting Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366 or toll free 866–SAFMC–10.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366 or toll free 866–SAFMC–10; fax: 843–769–4520; e-mail: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Additional hearings are being scheduled because the Council, at its October 2004 meeting, chose a new preferred alternative relevant to Federal penaeid shrimp permits that is more restrictive than earlier alternatives included in the initial round of public hearings. The new preferred alternative removes an earlier exception to the permit that stated:

a valid commercial vessel permit for South Atlantic penaeid shrimp is not required if the shrimp trawler (1) is in transit in the South Atlantic EEZ and (2) no trawl net or try net aboard the vessel is rigged for fishing.

The more restrictive Alternative 4 under Action 5 in Amendment 6 specifies:

For a person aboard a shrimp trawler to fish for penaeid shrimp in the South Atlantic EEZ or possess penaeid shrimp in or from the South Atlantic EEZ, a valid commercial vessel permit for South Atlantic penaeid shrimp must have been issued to the vessel and must be on board. A federal penaeid shrimp permit will be issued to any vessel owner who submits an application.

Alternative 4 and other alternatives are described further in the Council's public hearing document, which is a summary of alternatives for Action 5 in Amendment 6 to the Shrimp FMP (see **ADDRESSES** for information on obtaining the public hearing document).

These meetings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 19, 2004.

Dated: November 3, 2004.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–24957 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110304C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification of a proposal for Exempted Fishing Permits to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP may allow exemptions from the NE multispecies rolling closure areas, minimum mesh size, and the days-at-sea (DAS) effort control program for up to 16 DAS for testing a bycatch reducing gear modification. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before November 24, 2004.

ADDRESSES: Comments on this notice may be submitted by e-mail to: *DA564@noaa.gov*. Include in the subject line the following document identifier: ''Comments on UNH Double Grid Gear Modification EFP Proposal.'' Written comments may also be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on UNH Double Grid Gear Modification EFP Proposal.'' Comments may also be sent via fax to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Heather Sagar, Fishery Management Specialist, phone (978) 281–9341.

SUPPLEMENTARY INFORMATION: Notice of this proposed project was previously published in the **Federal Register** on September 24, 2004, (69 FR 57269) with the comment period ending on October 12, 2004. However, the exemption for the Gulf of Maine Regulated Mesh Area (RMA) minimum mesh size was inadvertently omitted in that notice.

Bart McNeel, in cooperation with the University of New Hampshire Cooperative Extension (UNH), submitted an application for an EFP on May 21, 2004, for a project that started in 2002. This EFP would authorize one commercial vessel to conduct sea trials using a double grid excluder device. The final phase of this 2-year study would be conducted by UNH with the goal of designing trawl gear through modifications to the grid bar orientations to release sub-legal sized cod and flatfish species incidental to the catch, while retaining fish of marketable size. To accomplish this, the commercial fishing vessel would conduct trawl net gear trials using the double grid excluder device within the Gulf of Maine and Georges Bank area from 40°30′ N. latitude to the coast of Maine, excluding the Western and Eastern U.S./Canada Areas and all groundfish year-round closure areas. An exemption from the minimum mesh size is requested in order to place a small-mesh catch bag over the escape vent in order to quantify the results.

The fishing portion of this study began in March 2002. The applicant requests an exemption from 16 DAS to complete the project during the 2004 fishing year. Based upon the catch rates from eight days of fishing in the 2003 fishing year, the following catch is estimated for the 2004 fishing year: American plaice 992 lb (450 kg); cod 7,200 lb (3,266 kg); haddock 1,376 lb (624 kg); monkfish 2,317 lb (1,051 kg); pollock 144 lb (65 kg); white hake 400 lb (181 kg); and witch flounder 688 lb (312 kg). Estimated discards are estimated to be: American plaice 112 lb (51 kg); cod 5,008 lb (2,272 kg); dogfish 9,008 lb (4,085 kg); herring 2,608 lb (1,183 kg); lobster 32 lb (15 kg); monkfish 48 lb (22 kg); skate 64 lb (29 kg); white hake 2,528 lb (1,147 kg); whiting 800 lb (363 kg); and witch flounder 32 lb (15 kg). All undersized fish would be returned to the sea as quickly as possible. Legal-sized fish that would otherwise have to be discarded would be allowed to be retained and sold within the applicable GOM possession limits. The participating vessel would be required to report all landings in its Vessel Trip Report.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 4, 2004.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–24955 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110404A]

Marine Mammals; File No. 1033–1683–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Michael A. Castellini, Ph.D., Institute of

Marine Science, School of Fisheries and Ocean Sciences, University of Alaska, Fairbanks, AK 99775, has requested an amendment to scientific research Permit No. 1033–1683–00.

DATES: Written, telefaxed, or e-mail comments must be received on or before December 9, 2004.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1033–1683–01.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 1033–1683–00, issued on September 25, 2002 (67 FR 62699) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 1033–1683–00 authorizes the permit holder to capture, sample, instrument and release Weddell seals, incidentally harass crabeater seal (*Lobodon carcinophagus*), leopard seal (*Hydrurga leptonyx*), Ross seal (*Ommatophoca rossii*), southern elephant seal (*Mirounga leonina*), and Antarctic fur seal (*Archtocephalus gazella*), and import blood, feces and milk collected during research. The permit holder requests authorization to: capture 20 additional adult Weddell seals (10 inshore, 10 offshore), handle, blood sample, collect a whisker and hair sample; and collect a whisker and hair sample from adult female seals already authorized to be taken. These activities will provide information of the effects of the Antarctic ecosystem changes on seals.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 4, 2004.

Jill Lewandowski,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–24954 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110304A]

Marine Mammals; File No. 782–1708

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that The National Marine Mammal Laboratory (NMML), National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 [PI: Dr. John Bengtson] has been issued an amendment to scientific research Permit No.782–1708–00 to take Northern fur seals (*Callorhinus ursinus*).

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 16, 2004, notice was published in the **Federal Register** (69 FR 55797) that an amendment of Permit No. 782–1708–00 issued on August 23, 2003 (68 FR 53967), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Permit authorizes the Holder to capture, restrain, shear mark, weigh, measure, sample (including tooth, tissue, blood, fecal and throat swabs, enema), ultrasound, flipper tag, and instrument fur seals; animals are recaptured to remove instruments or to reinstrument. Fur seals may be incidentally harassed during capture operations, surveys, and scat collection. Researchers may also collect, obtain, and maintain scientific specimens taken from dead animals during the native subsistence harvest (St. Paul and St. George only) and from animals found dead on rookeries during other research activities (all islands) in Alaska.

The Amendment authorizes the Holder to inject up to 60 pups with deuterium oxide (D2O) and up to 70 adults with tritiated water (3H2O). Animals may be blood sampled pre- and post-injection of isotopes, held up to 2.5 hours and released. At the end of the perinatal suckling period, the pups may be recaptured, weighed and a single 5–10 mL blood sample obtained. Females may also be biopsy sampled for fatty acid analysis. All animals requested are a subset of seals already authorized to be taken. No increase in number of animals taken is requested or authorized.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: November 3, 2004.

Amy Sloan,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–24956 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

November 3, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of man-made fiber knit shirts and blouses (Category 638/639).

SUMMARY: The Committee has received a request from the American Manufacturing Trade Action Coalition, National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE! (Requestors) asking the Committee to limit imports from China of man-made fiber knit shirts and blouses in accordance with the textile and apparel safeguard provision of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement). The Committee hereby solicits public comments on this request.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background

The textile and apparel safeguard provision of the Accession Agreement provides for the United States and other members of the World Trade Organization that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing ''(1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption.'' Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made. If exports from China exceed that amount, the United States may enforce the restriction.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On October 13, 2004, the Requestors asked the Committee to impose an Accession Agreement textile and apparel safeguard action on imports from China of man-made fiber knit shirts and blouses (Category 638/639) on the ground that an anticipated increase in man-made fiber knit shirts and blouses imports after January 1, 2005, threatens to disrupt the U.S. market for man-made fiber knit shirts and blouses. The request is available at *http://otexa.ita.doc.gov*. In light of the considerations set forth in the Procedures, the Committee has determined that the Requestors have provided the information necessary for the Committee to consider the request.

The Committee is soliciting public comments on the request, in particular with regard to whether there is a threat of disruption to the U.S. market for man-made fiber knit shirts and blouses and, if so, the role of Chinese-origin man-made fiber knit shirts and blouses in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on January 1, 2005: (1) Whether imports of man-made fiber knit shirts and blouses from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin man-made fiber knit shirts and blouses to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of man-made fiber knit shirts and blouses, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin man-made fiber knit shirts and blouses that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country markets); (4) The level and the extent of any recent change in inventories of man-made fiber knit shirts and blouses in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of man-made fiber knit shirts and blouses, and whether actual or anticipated imports of Chinese-origin man-made fiber knit shirts and blouses are likely to affect the development and production efforts of the U.S. man-made fiber knit shirts and blouses industry; and (6) Whether U.S. managers, retailers, purchasers, importers, or other market participants have recognized Chinese producers of man-made fiber knit shirts and blouses as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than December 9, 2004. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee will make a determination within 60 calendar days

of the close of the comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin man-made fiber knit shirts and blouses threaten to disrupt the U.S. market, the United States will request consultations with China with a view to easing or avoiding the disruption.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3085 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports From China

November 3, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton knit shirts and blouses (Category 338/339).

SUMMARY: The Committee has received a request from the American Manufacturing Trade Action Coalition, National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE! (Requestors) asking the Committee to limit imports from China of cotton knit shirts and blouses in accordance with the textile and apparel safeguard provision of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement). The Committee hereby solicits public comments on this request.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background

The textile and apparel safeguard provision of the Accession Agreement provides for the United States and other members of the World Trade Organization that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing ''(1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption.'' Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made. If exports from China exceed that amount, the United States may enforce the restriction.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On October 13, 2004, the Requestors asked the Committee to impose an Accession Agreement textile and apparel safeguard action on imports from China of cotton knit shirts and blouses (Category 338/339) on the ground that an anticipated increase in imports of cotton knit shirts and blouses after January 1, 2005, threatens to disrupt the U.S. market for cotton knit shirts and blouses. The request is available at *http://otexa.ita.doc.gov*. In light of the considerations set forth in the Procedures, the Committee has determined that the Requestors have provided the information necessary for the Committee to consider the request.

The Committee is soliciting public comments on the request, in particular with regard to whether there is a threat of disruption to the U.S. market for cotton knit shirts and blouses and, if so, the role of Chinese-origin cotton knit shirts and blouses in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on January 1, 2005: (1) Whether cotton knit shirts and blouses imports from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin cotton knit shirts and blouses to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of cotton knit shirts and blouses, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin cotton knit shirts and blouses that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country markets); (4) The level and the extent of any recent change in inventories of cotton knit shirts and blouses in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of cotton knit shirts and blouses, and whether actual or anticipated imports of Chinese-origin cotton knit shirts and blouses are likely to affect the development and production efforts of the U.S. cotton knit shirts and blouses industry; and (6) Whether U.S. managers, retailers, purchasers, importers, or other market participants have recognized Chinese producers of cotton knit shirts and blouses as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than December 9, 2004. Interested persons are invited to submit ten copies of such comments to

the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC, (202) 482–3433.

The Committee will make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefor to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cotton knit shirts and blouses threaten to disrupt the U.S. market, the United States will request consultations with China with a view to easing or avoiding the disruption.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3082 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

November 3, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of men's and boys' cotton and man-made fiber shirts, not knit (Category 340/640).

SUMMARY: The Committee has received a request from the American Manufacturing Trade Action Coalition, National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE! (Requestors) asking the Committee to limit imports from China of men's and boys' cotton and man-made fiber shirts, not knit, in accordance with the textile and apparel safeguard provision of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement). The Committee hereby solicits public comments on this request.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background

The textile and apparel safeguard provision of the Accession Agreement provides for the United States and other members of the World Trade Organization that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing ''(1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption.'' Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made. If exports from China exceed that amount, the United States may enforce the restriction.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On October 13, 2004, the Requestors asked the Committee to impose an Accession Agreement textile and apparel safeguard action on imports from China of men's and boys' cotton and man-made fiber shirts, not knit, (Category 340/640) on the ground that an anticipated increase in imports of men's and boys' cotton and man-made fiber shirts, not knit, after January 1, 2005, threatens to disrupt the U.S. market for men's and boys' cotton and man-made fiber shirts, not knit. The request is available at *http://otexa.ita.doc.gov*. In light of the considerations set forth in the Procedures, the Committee has determined that the Requestors have provided the information necessary for the Committee to consider the request.

The Committee is soliciting public comments on the request, in particular with regard to whether there is a threat of disruption to the U.S. market for men's and boys' cotton and man-made fiber shirts, not knit, and, if so, the role of Chinese-origin men's and boys' cotton and man-made fiber shirts, not knit, in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on January 1, 2005: (1) Whether imports of men's and boys' cotton and man-made fiber shirts, not knit, from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin men's and boys' cotton and man-made fiber shirts, not knit, to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of men's and boys' cotton and man-made fiber shirts, not knit, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin men's and boys' cotton and man-made fiber shirts, not knit, that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for

example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country markets); (4) The level and the extent of any recent change in inventories of men's and boys' cotton and man-made fiber shirts, not knit, in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of men's and boys' cotton and man-made fiber shirts, not knit, and whether actual or anticipated imports of Chinese-origin men's and boys' cotton and man-made fiber shirts, not knit, are likely to affect the development and production efforts of the U.S. men's and boys' cotton and man-made fiber shirt, not knit, industry; and (6) Whether U.S. managers, retailers, purchasers, importers, or other market participants have recognized Chinese producers of men's and boys' cotton and man-made fiber shirts, not knit, as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than December 9, 2004. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday–Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC, (202) 482–3433.

The Committee will make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin men's and boys' cotton and man-made fiber shirts, not knit, threaten to disrupt the U.S. market, the United States will request consultations with China with a view to easing or avoiding the disruption.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3083 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports From China

November 3, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton and man-made fiber underwear (Category 352/652).

SUMMARY: The Committee has received a request from the American Manufacturing Trade Action Coalition, National Council of Textile Organizations, the National Textile Association, and UNITE HERE! (Requestors) asking the Committee to limit imports from China of cotton and man-made fiber underwear in accordance with the textile and apparel safeguard provision of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement). The Committee hereby solicits public comments on this request.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background

The textile and apparel safeguard provision of the Accession Agreement provides for the United States and other members of the World Trade Organization that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing ''(1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption.'' Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made. If exports from China exceed that amount, the United States may enforce the restriction.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On October 15, 2004, the Requestors asked the Committee to impose an Accession Agreement textile and apparel safeguard action on imports from China of cotton and man-made fiber underwear (Category 352/652) on the ground that an anticipated increase in imports of cotton and man-made fiber underwear after January 1, 2005, threatens to disrupt the U.S. market for cotton and man-made fiber underwear. The request is available at *http://otexa.ita.doc.gov*. In light of the considerations set forth in the Procedures, the Committee has determined that the Requestors have provided the information necessary for the Committee to consider the request.

The Committee is soliciting public comments on the request, in particular with regard to whether there is a threat of disruption to the U.S. market for cotton and man-made fiber underwear and, if so, the role of Chinese-origin cotton and man-made fiber underwear in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on January 1, 2005: (1)

Whether imports of cotton and man-made fiber underwear from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin cotton and man-made fiber underwear to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of cotton and man-made fiber underwear, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin cotton and man-made fiber underwear that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country markets); (4) The level and the extent of any recent change in inventories of cotton and man-made fiber underwear in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of cotton and man-made fiber underwear, and whether actual or anticipated imports of Chinese-origin cotton and man-made fiber underwear are likely to affect the development and production efforts of the U.S. cotton and man-made fiber underwear industry; and (6) Whether U.S. managers, retailers, purchasers, importers, or other market participants have recognized Chinese producers of cotton and man-made fiber underwear as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than December 9, 2004. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday–Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC, (202) 482–3433.

The Committee will make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefor to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cotton and man-made fiber underwear threaten to disrupt the U.S. market, the United States will request consultations with China with a view to easing or avoiding the disruption.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3084 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

November 3, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of man-made fiber trousers (Category 647/648).

SUMMARY: The Committee has received a request from the American Manufacturing Trade Action Coalition, National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE! (Requestors) asking the Committee to limit imports from China of man-made fiber trousers in accordance with the textile and apparel safeguard provision of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement). The Committee hereby solicits public comments on this request.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background

The textile and apparel safeguard provision of the Accession Agreement provides for the United States and other members of the World Trade Organization that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing ''(1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption.'' Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made. If exports from China exceed that amount, the United States may enforce the restriction.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On October 13, 2004, the Requestors asked the Committee to impose an Accession Agreement textile and

apparel safeguard action on imports from China of man-made fiber trousers (Category 647/648) on the ground that an anticipated increase in man-made fiber trouser imports after January 1, 2005, threatens to disrupt the U.S. market for man-made fiber trousers. The request is available at *http://otexa.ita.doc.gov*. In light of the considerations set forth in the Procedures, the Committee has determined that the Requestors have provided the information necessary for the Committee to consider the request.

The Committee is soliciting public comments on the request, in particular with regard to whether there is a threat of disruption to the U.S. market for man-made fiber trousers and, if so, the role of Chinese-origin man-made fiber trousers in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on January 1, 2005: (1) Whether man-made fiber trousers imports from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin man-made fiber trousers to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of man-made fiber trousers, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin man-made fiber trousers that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third-country markets); (4) The level and the extent of any recent change in inventories of man-made fiber trousers in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of man-made fiber trousers, and whether actual or anticipated imports of Chinese-origin man-made fiber trousers are likely to affect the development and production efforts of the U.S. man-made fiber trousers industry; and (6) Whether U.S. managers, retailers, purchasers, importers, or other market participants have recognized Chinese producers of man-made fiber trousers as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than December 9, 2004. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue NW, Washington, DC 20230.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday and Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee will make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin man-made fiber trousers threaten to disrupt the U.S. market, the United States will request consultations with China with a view to easing or avoiding the disruption.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3086 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 3, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: November 9, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection website (*http://www.cbp.gov*), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Group II is being increased for special swing, reducing the limit for Category 369-S in Group I to account for the special swing being applied to Group II.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 65253, published on November 19, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 2004.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 13, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on November 9, 2004, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
369–S [2]	1,173,618 kilograms.
Group II	
200, 201, 220, 224–227, 237, 239pt. [3], 300, 301, 331pt. [4], 332, 333, 352, 359pt. [5], 360–362, 603, 604, 611–620, 624–629, 631pt. [6], 633, 638, 639, 643–646, 652, 659pt. [7], 666pt. [8], 845, 846 and 852, as a group	201,492,775 square meter equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[8] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3087 Filed 11–8–04 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Malaysia

November 3, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: November 9, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection website (*http://www.cbp.gov*), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 59921, published on October 20, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 2004.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on November 9, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
442	15,261 dozen.
445/446	38,868 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.E4–3088 Filed 11–8–04; 8:45 am]

BILLING CODE 3510–DS–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0026, Gross Collection of Exchange-Set Margins for Omnibus Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to gross collection of Exchange-Set margins for Omnibus Accounts.

DATES: Comments must be submitted on or before January 10, 2005.

ADDRESSES: Comments may be mailed to Lawrence B. Patent, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, (202) 418–5439; fax: (202) 418–5536; e-mail: *Ipatent@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Gross Collection of Exchange-Set Margins for Omnibus Accounts, OMB Control Number 3038–0026—Extension

Commission Rule 1.58 requires that FCMs margin omnibus accounts on a gross, rather than a net, basis. The rule provides that the carrying FCM need not collect margin for positions traded by a person through an omnibus account in excess of the amount which would be required if the same person, instead of trading through an omnibus account, maintained its own account with the carrying FCM.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR Section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 1.58	150	On occasion	600	.08	48

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of written records maintained in the last three years. Although the burden varies, such records may involve analytical work and analysis, as well as multiple levels of review.

Dated: November 4, 2004.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–24950 Filed 11–8–04; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Meeting

AGENCY: Department of the Army; DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Pub. L. 92–463, The Federal Advisory Committee Act, announcement is made of the following meeting:

Name of Committee: Armed Forces Epidemiological Board (AFEB).

Dates: November 30, 2004 (open meeting); December 1, 2004 (open meeting).

Times: 7:30 a.m.–5:20 p.m. (November 30, 2004). 7:30 a.m.–3:30 p.m. (December 1, 2004).

Location: The Island Club North Island Naval Air Station, 3629 Tulagi Road, Building 4, San Diego, CA 92155–5000.

Agenda: The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session.

FOR FURTHER INFORMATION CONTACT: Colonel Roger Gibson, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, VA 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: The entire sessions on November 30, 2004, and December 1, 2004, will be open to the public in accordance with Section 552b(b) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., appendix 1, subsection 10(d). Open sessions of the meeting will be limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–24905 Filed 11–8–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the Board of Visitors (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). This board was chartered on February 1, 2004 in compliance with the requirements set forth in title 10 U.S.C. 2166.

Dates: December 1–2, 2004.

Time: 8:45 a.m. to 3:30 p.m. (December 1) and 8:45 a.m. to 12 p.m. (December 2).

Location: Classroom 217, Building 35, 7011 Morrison Ave., Fort Benning, GA 31905.

Proposed Agenda: The WHINSEC BoV will receive new members and advisors, received updates on the status of actions taken on past BoV recommendations and an update on new activities and efforts since July 2004; look into any matters it deems important; meet with groups of WHINSEC faculty and students; and prepare for its Spring 2005 meeting in Washington, DC. The Board will also schedule its calendar for the remainder of 2005.

FOR FURTHER INFORMATION CONTACT: Shannon Russ, Executive Liaison, WHINSEC, Army G–3 at (703) 692–7419 or LTC Linda Gould, Deputy DFO and Chief, Latin American Branch, Army G–3 at (703) 692–7421.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Please note that the Board members will arrive at various times on November 30 and may use available time for individual member reviews of special interest items (yet to be determined) and will convene in plenary session on December 1, 2004. On December 1 the Board will adjourn for lunch between 12 p.m. and 1:30 p.m. The DFO has set aside 3 p.m. to 3:30 p..m. on December 1 for public comments by individuals and organizations. Public comment and presentations will be limited to two minutes each and members of the public desiring to make oral statements or presentations must inform the contact personnel, in writing. Requests must be received before Friday, November 26, 2004. Mail written presentations and requests to register to attend the public sessions to: Ms. Russ or LTC Gould at HQDA, DA0–G35–R (Room 3B473), 400 Army Pentagon, Washington, DC 20310. Public seating is limited, and is available on a first come, first served basis.

Dated: November 1, 2004.

Linda Gould,

USA, Alternate Designated Federal Officer, WHINSEC BoV.

[FR Doc. 04–24906 Filed 11–8–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement for the Cape Wind Energy Project, Nantucket Sound and Yarmouth, MA, Application for Corps Section 10 Individual Permit

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In keeping with the purposes of the National Environmental Policy Act (NEPA), the New England District, Corps of Engineers (Corps) has prepared a Draft Environmental Impact Statement (DEIS) in response to a permit application for the proposed construction of an offshore wind-powered generating facility by Cape Wind Associates, LLC on Horseshoe Shoal in Nantucket Sound, MA. The DEIS evaluated the potential environmental impacts associated with the construction, operation and decommissioning of the proposed offshore wind facility. Potential impacts at four alternative locations were also considered for comparison purposes. Public comment on the proposed and any or all of the alternative sites is requested and encouraged.

DATES: The Corps will hold four public hearings to receive comments on the DEIS. The public hearings will be held on:

1. December 6, 2004, 6 p.m. to 10 p.m., Oak Bluffs, MA.
2. December 7, 2004, 7 p.m. to 11 p.m., West Yarmouth, MA.
3. December 8, 2004, 6 p.m. to 10 p.m., Nantucket, MA.
4. December 16, 2004, 7 p.m. to 11 p.m., Cambridge, MA.

Comments on the DEIS must be received no later than January 10, 2005.

Additional information on how to submit comments is included in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: The hearing locations are:

1. Martha's Vineyard Regional High School, Vineyard Haven Road, Oak Bluffs, MA.
2. Mattacheese Middle School, 400 Higgins Crowell Road, West Yarmouth, MA.
3. Nantucket Community School, Mary P. Walker Auditorium, 10 Surfside Road, Nantucket, MA.
4. Massachusetts Institute of Technology, Building 10 Alumni Center (Maclaurin Buildings)—Room 10–250, 222 Memorial Drive, Cambridge, MA.

Additional information regarding locations where the DEIS and appendices can be viewed is included in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Karen Kirk Adams, 978–318–8335.

SUPPLEMENTARY INFORMATION: Cape Wind Associates, LLC (the applicant) has requested a permit under Section 10 of the Rivers and Harbors Act of 1899 to install 130 wind turbine generators, an electric service platform, and associated cable in an area of Nantucket Sound, Massachusetts known as Horseshoe Shoal. The applicant's intended purpose is to provide wind-generated energy that will be transmitted to the regional power grid. The wind turbine generators would be spaced one-third to one-half mile apart over a 24 square mile area, producing up to 454 megawatts of wind generated energy to be transmitted from a centrally located electric service platform via a submarine cable to a landfall location in Yarmouth, MA. The proposed wind turbines would be up to 420 feet high with the hub height approximately 260 feet above the water surface. The northernmost turbines would be approximately 4 miles from Yarmouth, MA, the southeastern most turbines would be approximately 11 miles from Nantucket, and the westernmost turbines would be approximately 5.5 miles from Martha's Vineyard. The proposed submarine cable system, consisting of two 115 kV solid dielectric cable circuits, would be jet-plow embedded into the seabed to a depth on approximately 6 feet below the present bottom. The overland cable system would be installed underground within existing public right-of-ways and roadways in the town of Yarmouth, MA to NSTAR's existing electric system in Barnstable, MA. The approximate construction start date for the proposed project is November 2005, with commercial operation starting in November 2006.

The DEIS is intended to provide the information needed for the Corps to perform a public interest review for the Section 10 permit decision. Significant issues analyzed in the DEIS included geology and sediment conditions; physical oceanographic conditions; benthic and shellfish resources; finfish resources and commercial and recreational fisheries; protected marine species; terrestrial ecology, wildlife, and protected species; avian resources; coastal and freshwater wetland resources; water quality; cultural and recreational resources; visual resources; noise; transportation; electrical and magnetic fields, telecommunications systems; air quality; and socioeconomic

resources. Several alternatives were evaluated for comparative purposes, including the No Action Alternative under which the new facility will not be built. In addition to the applicant's proposed location, which is Nantucket Sound, the potential impacts and benefits of locating a wind energy project at the Massachusetts Military Reservation, a site south of Tuckernuck Island, and a combination site comprised of two areas south of New Bedford with a reduced footprint in Nantucket Sound were evaluated for comparison purposes. Public comment on any or all of the alternatives is encouraged. The Notice of Intent for preparation of the DEIS was published in the **Federal Register** (67 FR 4414, January 30, 2002).

Other Environmental Review and Consultation Requirements. To the fullest extent possible, the DEIS integrated analyses and consultation required by the Endangered Species Act of 1973, as amended (Pub. L. 93–205; 16 U.S.C. 1531, *eq seq.*); the Magnuson-Stevens Fishery Conservation and Management Act, as amended (Pub. L. 94–265; 16 U.S.C. 1801, *et seq.*), the National Historic Preservation Act of 1966, as amended (Pub. L. 89–855; 16 U.S.C. 470. *et seq.*), the Fish and Wildlife Coordination Act of 1958, as amended (Pub. L. 85–624; 16 U.S.C. 661, *et seq.*); the Coastal Zone Management Act of 1972, as amended (Pub. L. 92–583; 16 U.S.C. 1451, *et seq.*); the Clean Water Act of 1977, as amended (Pub. L. 92–500; 33 U.S.C. 1251, *et seq.*); Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403 *et seq.*); the Outer Continental Shelf Lands Act (Pub. L. 95–372; 43 U.S.C. 1333(e)), and applicable and appropriate Executive Orders. Additionally, the DEIS was prepared as a Draft Environmental Impact Report to satisfy the requirements of the Massachusetts Environmental Policy Act (301 CMR 11.00 *et seq.*) and to satisfy the requirements of the Cape Cod Commission as a Development of Regional Impact.

Public Participation. Any person wishing to comment on the DEIS can submit written comments to: Karen Kirk Adams, Project Manager, Regulatory Division, U.S. Army Corps of Engineers, New England District, 696 Virginia Road, Concord, Massachusetts 01742–2751, Reference File No. NAE–2004–338–1, or by e-mail to *wind.energy@usace.army.mil.* Interested parties may view the DEIS online at *http://www.nae.usace.army.mil/projects/ma/ccwf/deis.htm.* The DEIS is also available to review at the following locations:

1. Sturgis Library, 3090 Main Street, (PO Box 606), Barnstable, MA.
2. South Yarmouth Library, 312 Old Main Street, Yarmouth, MA.
3. West Yarmouth Library, Route 28, West Yarmouth, MA.
4. Yarmouthport Library, 297 Main Street (6A), Yarmouthport, MA.
5. Whelden Memorial Library, 2401 Meeting House Way, (PO Box 147), West Barnstable, MA.
6. Cotuit Library, 871 Main Street (PO Box 648), Cotuit, MA.
7. Hyannis Public Library, 401 Main Street, Hyannis, MA.
8. Centerville Public Library, 585 Main Street, Centerville, MA.
9. Marstons Mills Library, 2160 Main Street, Marstons Mills, MA.
10. Osterville Free Library, 43 Wianno Avenue, Osterville, MA.
11. Mashpee Library, 100 Nathan Ellis Highway (PO Box 657), Mashpee, MA.
12. Falmouth Public Library, 123 Katherine Lee Bates Road, Falmouth, MA.
13. East Falmouth Public Library, 310 East Falmouth Highway, East Falmouth, MA.
14. North Falmouth Public Library, 6 Chester Street, North Falmouth, MA.
15. West Falmouth Public Library, 575 West Falmouth Highway (PO Box 1209), West Falmouth, MA.
16. Dennis Memorial Library, 1020 Old Bass River Road, Dennis, MA.
17. Dennis Public Library, 673 Main Street (Route 28), Dennisport, MA.
18. Woods Hole Library, 581 Woods Hole Road (PO Box 185), Woods Hole, MA.
19. Brooks Free Library, 739 Main Street, Harwich, MA.
20. Eldredge Public Library, 64 Main Street, Chatham, MA.
21. Nantucket Atheneum, 1 India Street (PO Box 808), Nantucket, MA.
22. Edgartown Free Public Library, 58 North Water Street (PO Box 5249), Edgartown, MA.
23. Oak Bluffs Public Library, 80 Pennacook Avenue (PO Box 2039), Oak Bluffs, MA.
24. Free Public Library, 1042A State Road (PO Box 190), West Tisbury, MA.
25. Chilmark Public Library, 522 South Road, Chilmark, MA.
26. Aquinnah Public Library, 1 Church Street, Aquinnah, MA.
27, New Bedford Free Public Library, 613 Pleasant Street, New Bedford, MA.
28. Jonathan Bourne Public Library, 19 Sandwich Road, Bourne, MA.
29. Vineyard Haven Public Library, RFD 139A Main Street, Vineyard Haven, MA.
30. Sandwich Free Public Library, 142 Main Street, Sandwich, MA.
31. Boston Public Library, Central Library, 700 Boylston Street, Boston, MA.
32. Cape Cod Community College, Wilkens Library, 2240 Iyanough Road, West Barnstable, MA.

Thomas L. Koning,

COL, EN, Commander.

[FR Doc. 04–24907 Filed 11–8–04; 8:45 am]

BILLING CODE 3710–24–M

DEPARTMENT OF ENERGY

Security 229 Boundary Revision at Oak Ridge Reservation, Y–12 National Security Complex

AGENCY: Real Estate Office, Oak Ridge Office, TN, U.S. Department of Energy.

ACTION: Notice of 229 boundary revision for Y–12 National Security Complex.

SUMMARY: Appended to this notice is the revised security boundary for the National Nuclear Security Administration facility identified as the Y–12 National Security Complex within the Oak Ridge Reservation at Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Katy Kates, Realty Officer at Oak Ridge Office, 865–576–0977, *katesse@oro.doe.gov.*

SUPPLEMENTARY INFORMATION: This security boundary is designated pursuant to Section 229 of the Atomic Energy Act of 1954. This revised boundary supersedes and/or redescribes the entries previously contained in **Federal Register** notices published October 19, 1965, at 30 FR 202 and the amending notice published July 8, 1985, at 50 FR 130, which identified the Y–12 Plant site and related facilities all being located in Anderson County, Tennessee.

Issued in Oak Ridge, Tennessee on October 15, 2004.

Daniel H. Wilken,

Assistant Manager for Administration.

Appendix

Security 229 Boundary Revision at Oak Ridge Reservation, Y–12 National Security Complex

Notice is hereby given that the United States Department of Energy, pursuant to section 229 of the Atomic Energy Act of 1954, as amended, as implemented by 10 CFR part 860 published in the **Federal Register** on August 16, 1963 (28 FR 8400), prohibits the unauthorized entry, as provided in 10 CFR 860.3, and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 860.4, into or upon the following described facility of the United States Department of Energy:

The bearings and distances of the description set forth below are based on the Tennessee State Plane Coordinate System NAD 83 (88).

A parcel of land situated in Anderson County, Tennessee within the Oak Ridge Reservation in Oak Ridge, Tennessee and being identified as the Y–12 National Security Complex of the National Nuclear Security Administration. Beginning at an iron pin, said iron pin being located in the west right-of-way of the South Illinois Avenue ''wye'' and being located at State Plane Grid Coordinates N=611,517.13 and E=2,487,754.62; thence along the following bearings and distances to a point located by iron pins at each of the calls:

S 46°25′25″ E a distance of 487.56 feet,
S 46°25′25″ E a distance of 194.22 feet,
S 64°22′21″ E a distance of 204.07 feet,
S 39°30′35″ E a distance of 894.44 feet,
S 12°34′25″ W a distance of 47.01 feet,
S 40°28′42″ E a distance of 90.39 feet,
N 52°43′13″ E a distance of 52.66 feet,
N 53°23′27″ E a distance of 50.46 feet,
N 84°27′17″ E a distance of 53.14 feet,
S 75°26′32″ E a distance of 34.40 feet,
S 68°04′27″ E a distance of 681.13 feet;

Thence a distance of 334.72 feet along a curve to the right having a radius of 3654.36 feet and a chord bearing of S 65°27′42″ E and a distance of 334.60 feet;

S 60°30′03″ E a distance of 399.71 feet,
S 41°00′20″ E a distance of 27.51 feet;

Thence a distance of 62.62 feet along a curve to the right having a radius of 35.00 feet and a chord bearing of S 10°15′17″ W and a distance of 54.59 feet;

S 61°30′55″ W a distance of 18.83 feet,
S 28°29′05″ E a distance of 63.62 feet,
N 74°24′26″ E a distance of 81.70 feet,
S 84°30′40″ E a distance of 69.77 feet,
S 68°35′40″ E a distance of 125.65 feet,
S 65°47′40″ E a distance of 265.69 feet,
S 60°48′40″ E a distance of 284.13 feet,
S 57°44′40″ E a distance of 250.37 feet,
S 55°39′40″ E a distance of 547.63 feet,
S 41°49′40″ E a distance of 134.62 feet,
S 31°23′40″ E a distance of 398.14 feet,
N 59°06′16″ E a distance of 36.69 feet;

Thence a distance of 235.30 feet along a curve to the left having a radius of 2352.12 feet and a chord bearing of S 36°25′11″ E and a distance of 235.20 feet;

S 37°37′14″ E a distance of 312.21 feet,
S 35°45′22″ E a distance of 330.90 feet,
S 36°23′29″ E a distance of 606.16 feet;

Thence a distance of 86.90 feet along a curve to the right having a radius of 366.98 feet and a chord bearing of S 30°36′48″ E and a distance of 86.70 feet;

Thence a distance of 49.59 feet along a curve to the left having a radius of 288.95 feet and a chord bearing of S 26°36′16″ E and a distance of 49.52 feet;

S 31°23′36″ E a distance of 88.11 feet,
S 27°43′42″ E a distance of 588.99 feet;

Thence a distance of 130.10 feet along a curve to the right having a radius of 1871.86 feet and a chord bearing of S 23°49′30″ E and a distance of 130.07 feet;

S 20°46′47″ E a distance of 148.91 feet;

Thence a distance of 102.74 feet along a curve to the left having a radius of 1060.61 feet and a chord bearing of S 22°56′11″ E and a distance of 102.70 feet;

S 21°23′58″ E a distance of 249.78 feet,
S 07°12′51″ W a distance of 185.34 feet,
S 09°49′55″ W a distance of 181.89 feet,
S 14°34′48″ W a distance of 368.08 feet,
S 24°12′32″ W a distance of 191.98 feet,
S 42°01′40″ W a distance of 117.36 feet,
S 56°41′47″ W a distance of 320.00 feet,
S 61°08′20″ W a distance of 65.74 feet,
S 58°34′50″ W a distance of 224.37 feet,
S 66°32′37″ W a distance of 174.83 feet,
S 68°17′49″ W a distance of 189.40 feet,
S 66°25′37″ W a distance of 167.35 feet,
S 64°50′22″ W a distance of 102.28 feet,
S 55°51′07″ W a distance of 123.78 feet,
S 59°53′17″ W a distance of 167.82 feet,
S 62°45′29″ W a distance of 415.66 feet,
S 63°01′50″ W a distance of 200.82 feet,
S 60°50′52″ W a distance of 137.56 feet,
S 57°52′28″ W a distance of 41.63 feet,
S 57°22′27″ W a distance of 55.59 feet,
S 54°31′35″ W a distance of 66.48 feet,
S 52°23′07″ W a distance of 89.96 feet,
S 46°32′03″ W a distance of 139.81 feet,
S 45°42′09″ W a distance of 205.37 feet,
S 46°33′46″ W a distance of 177.19 feet,
S 51°56′55″ W a distance of 236.00 feet,
S 56°32′26″ W a distance of 211.34 feet,
S 59°57′13″ W a distance of 297.15 feet,
S 58°08′57″ W a distance of 179.90 feet,
S 53°05′38″ W a distance of 211.32 feet,
S 51°24′39″ W a distance of 143.47 feet,
S 51°16′37″ W a distance of 703.98 feet,
S 51°26′00″ W a distance of 174.70 feet,
S 51°58′29″ W a distance of 54.24 feet,
S 51°11′27″ W a distance of 325.77 feet,
S 50°33′57″ W a distance of 200.03 feet,
S 52°32′40″ W a distance of 224.98 feet,
S 54°43′22″ W a distance of 115.12 feet,
S 61°17′36″ W a distance of 121.27 feet,
S 59°18′08″ W a distance of 89.56 feet,
S 53°43′47″ W a distance of 97.97 feet,
S 44°50′59″ W a distance of 104.33 feet,
S 39°06′34″ W a distance of 597.64 feet,
S 43°42′20″ W a distance of 342.63 feet,
S 50°55′40″ W a distance of 655.53 feet,
S 51°29′14″ W a distance of 163.35 feet,
S 51°29′36″ W a distance of 93.98 feet,
S 62°06′33″ W a distance of 244.69 feet,
S 51°53′10″ W a distance of 92.10 feet,
S 52°57′39″ W a distance of 71.75 feet,
S 51°22′08″ W a distance of 318.93 feet,
S 51°04′14″ W a distance of 405.64 feet,
S 64°31′21″ W a distance of 18.65 feet,
S 42°24′41″ W a distance of 35.02 feet,
S 52°23′44″ W a distance of 40.07 feet,
S 52°24′51″ W a distance of 45.20 feet,
S 53°28′25″ W a distance of 247.35 feet,
S 59°46′04″ W a distance of 195.54 feet,
S 66°09′10″ W a distance of 288.09 feet,
S 66°37′33″ W a distance of 256.79 feet,
S 62°55′08″ W a distance of 139.60 feet,
S 48°54′50″ W a distance of 132.67 feet,
S 33°49′23″ W a distance of 126.30 feet,
S 26°55′55″ W a distance of 187.00 feet,
S 34°23′22″ W a distance of 186.72 feet,
S 48°51′42″ W a distance of 133.21 feet,
S 52°37′02″ W a distance of 560.77 feet,
N 66°01′59″ W a distance of 24.60 feet,
N 83°08′04″ W a distance of 68.54 feet,
N 30°08′16″ W a distance of 101.85 feet,
S 65°02′55″ W a distance of 56.79 feet,
N 21°23′06″ W a distance of 156.25 feet,
N 32°55′02″ W a distance of 206.58 feet,
N 40°35′55″ W a distance of 196.27 feet,
N 09°44′34″ W a distance of 89.76 feet,
N 03°38′20″ E a distance of 55.89 feet,
N 14°11′20″ E a distance of 54.56 feet,
N 29°04′22″ E a distance of 113.35 feet,
N 26°31′04″ E a distance of 168.46 feet,
N 28°05′44″ E a distance of 79.33 feet,
N 34°35′24″ E a distance of 150.51 feet,
N 34°08′37″ E a distance of 138.36 feet,
N 37°07′46″ E a distance of 143.50 feet,
N 38°29′47″ E a distance of 70.51 feet,
N 30°23′20″ E a distance of 47.17 feet,
N 18°20′11″ E a distance of 51.19 feet,
N 03°44′41″ E a distance of 56.24 feet,
N 19°05′51″ W a distance of 58.67 feet,
N 35°17′41″ W a distance of 58.15 feet,
N 45°54′09″ W a distance of 150.73 feet,
N 55°43′33″ W a distance of 77.30 feet,
N 68°58′04″ W a distance of 76.46 feet,
N 78°21′36″ W a distance of 132.22 feet,
N 70°03′53″ W a distance of 183.66 feet,
N 86°24′59″ W a distance of 54.73 feet,
N 54°00′50″ W a distance of 17.07 feet,
N 65°14′04″ W a distance of 129.89 feet,
S 20°51′26″ W a distance of 124.69 feet,
S 22°27′24″ W a distance of 77.75 feet,
S 27°59′49″ W a distance of 50.12 feet,
S 31°51′44″ W a distance of 49.25 feet,
S 37°46′53″ W a distance of 84.37 feet,
S 51°58′24″ W a distance of 78.10 feet,
S 61°08′24″ W a distance of 78.55 feet,
S 69°06′16″ W a distance of 59.55 feet,
S 72°11′29″ W a distance of 159.42 feet,
S 76°24′36″ W a distance of 49.53 feet,
S 85°19′07″ W a distance of 27.29 feet,
S 74°03′06″ W a distance of 47.43 feet,
S 80°03′35″ W a distance of 64.45 feet,
S 55°39′30″ W a distance of 33.59 feet,
S 82°14′03″ W a distance of 194.45 feet,
N 86°28′53″ W a distance of 240.54 feet,
N 36°55′09″ W a distance of 126.81 feet,
N 79°16′05″ W a distance of 70.61 feet,
N 82°27′12″ W a distance of 97.53 feet,
N 75°14′49″ W a distance of 257.60 feet,
N 67°18′21″ W a distance of 74.47 feet,
N 71°54′54″ W a distance of 163.22 feet,
N 78°46′23″ W a distance of 123.24 feet,
N 74°11′28″ W a distance of 88.54 feet,
N 54°53′28″ W a distance of 130.59 feet,
N 43°19′26″ W a distance of 85.71 feet,
N 39°11′34″ W a distance of 57.54 feet,
N 16°13′43″ W a distance of 87.94 feet,
N 56°41′12″ W a distance of 120.20 feet,
N 10°37′09″ E a distance of 156.06 feet,
N 04°44′10″ E a distance of 76.99 feet,
N 22°06′28″ W a distance of 134.61 feet,
N 28°13′53″ W a distance of 136.97 feet,
N 06°05′29″ W a distance of 44.29 feet,
N 06°27′04″ W a distance of 153.70 feet,
N 30°35′19″ W a distance of 18.88 feet,
N 05°26′33″ E a distance of 62.60 feet,
N 06°51′14″ W a distance of 72.70 feet,
N 35°09′37″ W a distance of 70.52 feet,
S 72°44′13″ W a distance of 294.53 feet,
N 83°18′30″ W a distance of 220.95 feet,
S 80°01′15″ W a distance of 417.69 feet,
S 78°47′55″ W a distance of 142.35 feet,
S 80°48′08″ W a distance of 340.12 feet,
S 75°09′19″ W a distance of 243.31 feet,
S 72°29′33″ W a distance of 332.90 feet,
S 64°19′46″ W a distance of 56.29 feet,
S 21°27′53″ E a distance of 16.18 feet,
S 46°02′21″ W a distance of 144.93 feet,
S 44°11′43″ W a distance of 107.91 feet,
S 46°38′23″ W a distance of 118.82 feet,
S 51°31′17″ W a distance of 140.43 feet,
S 41°32′55″ W a distance of 69.19 feet,
S 50°45′06″ W a distance of 123.82 feet,
S 74°53′55″ W a distance of 61.23 feet,
S 71°19′58″ W a distance of 63.26 feet,
S 59°42′07″ W a distance of 48.59 feet,
S 38°42′09″ W a distance of 47.60 feet,
S 21°07′37″ W a distance of 14.01 feet,

S 22°17′15″ W a distance of 42.33 feet,
S 38°23′53″ W a distance of 125.48 feet,
S 29°45′28″ W a distance of 109.63 feet,
S 23°00′56″ W a distance of 51.53 feet,
S 33°09′29″ W a distance of 65.36 feet,
S 43°44′27″ W a distance of 41.04 feet,
S 36°34′06″ W a distance of 19.15 feet,
S 55°40′05″ W a distance of 39.36 feet,
S 73°06′42″ W a distance of 87.60 feet,
S 67°03′23″ W a distance of 20.36 feet,
S 61°13′28″ W a distance of 70.15 feet,
S 68°33′34″ W a distance of 89.85 feet,
N 39°03′36″ W a distance of 291.49 feet,
N 38°56′19″ W a distance of 303.24 feet,
N 38°56′23″ W a distance of 164.80 feet,
N 38°56′23″ W a distance of 46.78 feet,
N 38°59′17″ W a distance of 187.02 feet,
N 36°26′08″ W a distance of 116.70 feet,
N 31°55′54″ W a distance of 199.17 feet,
N 21°44′47″ W a distance of 159.30 feet,
N 14°23′20″ W a distance of 166.55 feet,
N 24°10′55″ W a distance of 76.15 feet,
N 36°14′34″ W a distance of 102.36 feet,
N 21°59′31″ W a distance of 171.34 feet,
N 57°11′45″ W a distance of 81.41 feet,
N 41°56′28″ W a distance of 105.80 feet,
N 47°01′49″ E a distance of 93.93 feet,
N 43°33′46″ E a distance of 11.58 feet,
N 33°08′20″ E a distance of 47.85 feet,
N 43°01′32″ E a distance of 23.80 feet,
N 35°12′37″ E a distance of 21.93 feet,
N 38°00′38″ W a distance of 12.77 feet,
N 39°36′51″ W a distance of 42.99 feet,
N 33°37′00″ W a distance of 65.19 feet,
N 42°13′09″ E a distance of 11.23 feet,
N 39°21′06″ E a distance of 18.31 feet,
N 43°47′37″ W a distance of 94.02 feet,
N 39°19′11″ W a distance of 77.12 feet,
N 62°23′59″ W a distance of 39.84 feet,
N 67°21′20″ W a distance of 43.16 feet,
N 51°42′44″ W a distance of 109.52 feet,
N 26°28′35″ W a distance of 26.42 feet,
N 31°33′35″ E a distance of 103.13 feet,
N 04°42′25″ E a distance of 49.34 feet,
N 10°50′26″ W a distance of 57.41 feet,
N 09°31′04″ W a distance of 259.67 feet,
N 32°33′48″ W a distance of 238.14 feet,
N 35°35′12″ W a distance of 171.65 feet,
N 37°25′52″ W a distance of 180.80 feet,
N 64°46′21″ E a distance of 67.00 feet,
N 43°07′08″ E a distance of 265.84 feet,
N 63°09′01″ E a distance of 184.95 feet,
N 29°45′29″ E a distance of 116.97 feet,
N 19°02′40″ E a distance of 162.89 feet,
N 79°02′51″ E a distance of 255.61 feet,
N 41°40′15″ E a distance of 73.35 feet,
N 38°17′21″ E a distance of 161.04 feet,
N 42°03′59″ E a distance of 130.60 feet,
N 58°04′51″ E a distance of 163.12 feet,
N 25°55′32″ W a distance of 58.37 feet,
N 18°31′15″ W a distance of 32.02 feet,
N 30°39′40″ W a distance of 43.46 feet,
N 25°25′55″ W a distance of 75.09 feet,
N 02°00′03″ E a distance of 135.07 feet,
N 79°18′57″ W a distance of 134.63 feet,
N 67°33′52″ W a distance of 242.20 feet,
N 32°42′03″ W a distance of 104.70 feet,
N 36°14′11″ W a distance of 180.89 feet,
N 34°02′27″ W a distance of 139.00 feet,
N 33°16′40″ W a distance of 183.87 feet,
N 21°53′27″ W a distance of 112.52 feet,
N 58°59′55″ W a distance of 41.00 feet,
N 38°11′10″ W a distance of 104.91 feet,
N 36°57′11″ W a distance of 312.79 feet,
N 36°15′48″ W a distance of 102.82 feet,
N 32°18′10″ W a distance of 138.91 feet,
N 37°36′51″ W a distance of 132.85 feet,
N 38°21′19″ E a distance of 47.59 feet;

Thence a distance of 119.00 feet along a curve to the left having a radius of 154.98 feet and a chord bearing of S 71°32′02″ E and a distance of 116.09 feet;

S 88°45′12″ E a distance of 80.42 feet,
S 81°41′27″ E a distance of 32.15 feet,
S 77°05′40″ E a distance of 135.27 feet;

Thence a distance of 160.21 feet along a curve to the left having a radius of 371.86 feet and a chord bearing of S 84°41′01″ E and a distance of 158.97 feet;

N 81°28′15″ E a distance of 170.39 feet;

Thence a distance of 118.35 feet along a curve to the right having a radius of 558.44 feet and a chord bearing of N 86°50′56″ E and a distance of 118.13 feet;

S 84°12′29″ E a distance of 160.95 feet;

Thence a distance of 129.91 feet along a curve to the right having a radius of 323.54 feet and a chord bearing of N 86°13′00″ E and a distance of 129.04 feet;

N 69°33′56″ E a distance of 110.02 feet;

Thence a distance of 189.21 feet along a curve to the left having a radius of 1254.00 feet and a chord bearing of N 66°09′31″ E and a distance of 189.03 feet;

N 60°24′05″ E a distance of 240.41 feet,
N 59°13′33″ E a distance of 79.68 feet,
N 56°52′13″ E a distance of 246.05 feet;

Thence a distance of 56.79 feet along a curve to the right having a radius of 1579.75 feet and a chord bearing of N 58°36′13″ E and a distance of 56.79 feet;

N 60°39′51″ E a distance of 355.18 feet,
N 58°51′39″ E a distance of 169.33 feet,
N 57°54′52″ E a distance of 80.29 feet,
N 54°48′19″ E a distance of 329.07 feet,
N 51°33′24″ E a distance of 59.67 feet;

Thence a distance of 272.54 feet along a curve to the right having a radius of 522.81 feet and a chord bearing of N 61°03′40″ E and a distance of 269.46 feet;

N 73°48′40″ E a distance of 687.35 feet;

Thence a distance of 109.34 feet along a curve to the left having a radius of 406.92 feet and a chord bearing of N 68°30′24″ E and a distance of 109.01 feet;

N 61°55′59″ E a distance of 218.98 feet,
N 58°19′10″ E a distance of 120.18 feet,
N 57°40′32″ E a distance of 459.59 feet;

Thence a distance of 89.18 feet along a curve to the left having a radius of 189.42 feet and a chord bearing of N 44°54′14″ E and a distance of 88.35 feet;

Thence a distance of 251.58 feet along a curve to the right having a radius of 192.97 feet and a chord bearing of N 54°44′32″ E and a distance of 234.14 feet;

N 86°58′09″ E a distance of 122.42 feet;

Thence a distance of 125.70 feet along a curve to the left having a radius of 123.87 feet and a chord bearing of N 61°02′55″ E and a distance of 120.38 feet;

N 34°12′19″ E a distance of 48.88 feet;

Thence a distance of 120.18 feet along a curve to the right having a radius of 218.19 feet and a chord bearing of N 51°00′05″ E and a distance of 118.67 feet;

N 65°48′14″ E a distance of 158.11 feet;

Thence a distance of 66.46 feet along a curve to the left having a radius of 286.14 feet and a chord bearing of N 59°49′47″ E and a distance of 66.31 feet; N 49°23′13″ E a distance of 58.96 feet;

Thence a distance of 86.10 feet along a curve to the right having a radius of 155.35 feet and a chord bearing of N 61°34′55″ E and a distance of 85.00 feet;

N 78°11′41″ E a distance of 51.07 feet;

Thence a distance of 67.77 feet along a curve to the left having a radius of 93.31 feet and a chord bearing of N 55°11′16″ E and a distance of 66.29 feet;

N 30°42′02″ E a distance of 70.01 feet;

Thence a distance of 170.51 feet along a curve to the right having a radius of 245.94 feet and a chord bearing of N 48°22′51″ E and a distance of 167.12 feet;

N 69°41′17″ E a distance of 130.48 feet;

Thence a distance of 78.64 feet along a curve to the right having a radius of 212.94 feet and a chord bearing of N 82°09′00″ E and a distance of 78.20 feet;

Thence a distance of 63.04 feet along a curve to the right having a radius of 101.40 feet and a chord bearing of S 69°15′00″ E and a distance of 62.03 feet;

Thence a distance of 89.77 feet along a curve to the right having a radius of 290.95 feet and a chord bearing of S 39°09′04″ E and a distance of 89.42 feet;

S 51°08′06″ E a distance of 49.25 feet;

Thence a distance of 91.26 feet along a curve to the left having a radius of 45.25 feet and a chord bearing of N 72°35′55″ E and a distance of 76.56 feet;

N 16°49′50″ E a distance of 99.57 feet;

Thence a distance of 102.73 feet along a curve to the right having a radius of 274.36 feet and a chord bearing of N 26°21′28″ E and a distance of 102.13 feet;

Thence a distance of 88.41 feet along a curve to the right having a radius of 163.73 feet and a chord bearing of N 53°45′40″ E and a distance of 87.34 feet;

N 80°13′40″ E a distance of 48.76 feet;

Thence a distance of 88.53 feet along a curve to the left having a radius of 98.89 feet and a chord bearing of N 63°48′08″ E and a distance of 85.60 feet;

N 35°29′17″ E a distance of 69.20 feet;

Thence a distance of 126.21 feet along a curve to the right having a radius of 315.26 feet and a chord bearing of N 47°50′19″ E and a distance of 125.37 feet;

Thence a distance of 118.08 feet along a curve to the right having a radius of 256.97 feet and a chord bearing of N 69°30′09″ E and a distance of 117.04 feet;

Thence a distance of 96.52 feet along a curve to the right having a radius of 157.59 feet and a chord bearing of S 75°09′06″ E and a distance of 95.02 feet;

S 63°25′59″ E a distance of 181.24 feet,
N 77°00′10″ E a distance of 60.13 feet,
N 71°37′23″ E a distance of 44.39 feet,
N 78°14′53″ E a distance of 40.72 feet;

Thence a distance of 96.53 feet along a curve to the left having a radius of 114.54 feet and a chord bearing of N 67°02′46″ E and a distance of 93.70 feet;

N 42°28′05″ E a distance of 44.98 feet;

Thence a distance of 118.99 feet along a curve to the right having a radius of 253.19 feet and a chord bearing of N 58°43′22″ E and a distance of 117.90 feet;

N 76°19′12″ E a distance of 66.71 feet;

Thence a distance of 138.59 feet along a curve to the left having a radius of 102.26 feet and a chord bearing of N 50°56′43″ E and a distance of 128.23 feet;

Thence a distance of 94.25 feet along a curve to the right having a radius of 258.25 feet and a chord bearing of N 20°03′27″ E and a distance of 93.72 feet;

Thence a distance of 88.75 feet along a curve to the right having a radius of 144.08 feet and a chord bearing of N 48°35′50″ E and a distance of 87.36 feet;

Thence a distance of 132.51 feet along a curve to the right having a radius of 423.05 feet and a chord bearing of N 70°29′57″ E and a distance of 131.97 feet;

Thence a distance of 96.18 feet along a curve to the left having a radius of 101.22 feet and a chord bearing of N 64°06′04″ E and a distance of 92.60 feet;

N 38°58′18″ E a distance of 49.60 feet,

N 40°48′12″ E a distance of 36.85 feet;

Thence a distance of 93.10 feet along a curve to the right having a radius of 190.71 feet and a chord bearing of N 55°26′32″ E and a distance of 92.18 feet;

N 70°31′45″ E a distance of 148.98 feet;

Thence a distance of 114.81 feet along a curve to the left having a radius of 204.20 feet and a chord bearing of N 54°14′16″ E and a distance of 113.30 feet;

N 34°42′13″ E a distance of 61.92 feet;

Thence a distance of 105.92 feet along a curve to the right having a radius of 253.10 feet and a chord bearing of N 46°39′38″ E and a distance of 105.15 feet;

N 59°04′37″ E a distance of 140.18 feet,

N 60°56′33″ E a distance of 80.09 feet;

Thence a distance of 116.39 feet along a curve to the left having a radius of 286.97 feet and a chord bearing of N 51°51′02″ E and a distance of 115.59 feet;

Thence a distance of 100.95 feet along a curve to the right having a radius of 271.49 feet and a chord bearing of N 52°30′51″ E and a distance of 100.37 feet;

Thence a distance of 106.76 feet along a curve to the left having a radius of 224.96 feet and a chord bearing of N 50°25′41″ E and a distance of 105.76 feet;

Thence a distance of 111.88 feet along a curve to the right having a radius of 201.98 feet and a chord bearing of N 52°51′03″ E and a distance of 110.45 feet;

Thence a distance of 79.05 feet along a curve to the left having a radius of 138.81 feet and a chord bearing of N 54°19′25″ E and a distance of 77.98 feet;

N 35°25′58″ E a distance of 35.96 feet;

Thence a distance of 95.97 feet along a curve to the right having a radius of 164.55 feet and a chord bearing of N 52°42′36″ E and a distance of 94.62 feet;

N 71°13′19″ E a distance of 49.99 feet,

N 62°59′29″ E a distance of 71.02 feet,

N 68°01′30″ E a distance of 96.52 feet;

Thence a distance of 99.85 feet along a curve to the left having a radius of 273.40 feet and a chord bearing of N 57°03′39″ E and a distance of 99.30 feet;

Thence a distance of 100.67 feet along a curve to the right having a radius of 354.97 feet and a chord bearing of N 51°12′38″ E and a distance of 100.33 feet;

N 58°43′39″ E a distance of 139.63 feet,

N 64°54′29″ E a distance of 178.46 feet;

Thence a distance of 119.93 feet along a curve to the left having a radius of 121.04 feet and a chord bearing of N 41°56′03″ E and a distance of 115.09 feet;

N 21°57′45″ E a distance of 61.47 feet;

Thence a distance of 67.58 feet along a curve to the right having a radius of 104.41 feet and a chord bearing of N 44°42′09″ E and a distance of 66.41 feet;

Thence a distance of 70.82 feet along a curve to the right having a radius of 110.66 feet and a chord bearing of N 81°56′21″ E and a distance of 69.62 feet;

S 75°13′34″ E a distance of 38.98 feet,

S 70°40′13″ E a distance of 99.33 feet,

S 74°2′20′″ E a distance of 50.61 feet;

Thence a distance of 127.29 feet along a curve to the left having a radius of 83.20 feet and a chord bearing of N 70°27′22″ E and a distance of 115.23 feet;

N 19°42′24″ E a distance of 69.47 feet;

Thence a distance of 90.74 feet along a curve to the right having a radius of 146.44 feet and a chord bearing of N 37°23′54″ E and a distance of 89.30 feet;

N 54°45′44″ E a distance of 266.17 feet,

N 49°20′39″ E a distance of 23.35 feet,

N 44°18′53″ E a distance of 72.37 feet;

Thence a distance of 137.61 feet along a curve to the right having a radius of 303.20 feet and a chord bearing of N 56°45′30″ E and a distance of 136.44 feet;

N 65°26′08″ E a distance of 219.74 feet,

N 60°27′37″ E a distance of 180.07 feet;

Thence a distance of 118.52 feet along a curve to the left having a radius of 220.33 feet and a chord bearing of N 56°30′15″ E and a distance of 117.10 feet;

N 42°11′57″ E a distance of 50.07 feet;

Thence a distance of 71.15 feet along a curve to the right having a radius of 167.32 feet and a chord bearing of N 57°50′34″ E and a distance of 70.62 feet;

N 73°32′28″ E a distance of 39.54 feet;

Thence a distance of 78.54 feet along a curve to the left having a radius of 114.83 feet and a chord bearing of N 53°40′20″ E and a distance of 77.02 feet;

Thence a distance of 69.35 feet along a curve to the right having a radius of 317.86 feet and a chord bearing of N 38°06′56″ E and a distance of 69.21 feet;

Thence a distance of 97.16 feet along a curve to the right having a radius of 270.45 feet and a chord bearing of N 55°43′50″ E and a distance of 96.63 feet;

Thence a distance of 59.46 feet along a curve to the right having a radius of 151.86 feet and a chord bearing of N 83°18′11″ E and a distance of 59.09 feet;

S 83°42′52″ E a distance of 28.07 feet;

Thence a distance of 107.00 feet along a curve to the left having a radius of 99.53 feet and a chord bearing of N 58°02′26″ E and a distance of 101.92 feet;

N 29°40′02″ E a distance of 96.11 feet,

N 36°45′23″ E a distance of 52.85 feet;

Thence a distance of 70.20 feet along a curve to the right having a radius of 200.82 feet and a chord bearing of N 46°40′52″ E and a distance of 69.85 feet;

N 55°42′28″ E a distance of 620.71 feet;

N 62°41′38″ E a distance of 411.92 feet to the point of beginning, said parcel containing 3,103.50 acres prior to the deduction of the exclusion areas below:

Exclusion Area No. 1

Beginning at concrete monument 00–Y–162 set on the north side of Bear Creek Road and having coordinates of N=610,082.8100 and E=2,488,527.1000, and point being S 70°49′ W a distance of 615 feet from the centerline intersection of Bear Creek Road and Scarboro Road; thence along the following bearings and distances to a point located by iron pins at each of the calls:

S 51°53′33″ W a distance of 782.97 feet to concrete monument 00–Y–163 having coordinates of N=609,599.6100 and E=2,487,911.0200; thence S 65°58′55″ W a distance of 1740.91 feet; thence a distance of 56.44 feet along a curve to the right having a radius of 35.00 feet and a chord bearing of S 17°02′37″ W and a distance of 50.52 feet;

S 61°35′46″ W a distance of 658.58 feet,

N 40°54′14″ W a distance of 90.02 feet,

S 47°39′06″ W a distance of 208.40 feet;

Thence a distance of 33.29 feet along a curve to the left having a radius of 641.96 feet and a chord bearing of S 38°38′37″ W and a distance of 207.48 feet; thence a distance of 33.29 feet along a curve to the left having a radius of 15.00 feet and a chord bearing of S 50°13′55″ E and a distance of 26.87 feet;

Thence S 29°50′08″ East a distance of 5.09 feet to a point on the north side of the pavement of Bear Creek Road; thence with said pavement S 58°19′32″ West a distance of 120.80 feet; thence leaving the said pavement N 18°17′28″ W a distance of 4.57 feet;

Thence a distance of 42.11 feet along a curve to the left having a radius of 77.65 feet and a chord bearing of N 32°28′32″ E and a distance of 41.59 feet;

Thence along the north edge of Water Plant Access Road a distance of 305.96 feet along a curve to the right having a radius of 643.85 feet and a chord bearing of N 36°30′09″ E and a distance of 303.09 feet;

N 47°27′06″ E a distance of 189.92 feet,

N 41°17′00″ E a distance of 124.09 feet,

N 42°06′38″ E a distance of 181.51 feet,

N 46°48′19″ E a distance of 95.15 feet;

Thence a distance of 66.86 feet along a curve to the left having a radius of 193.47 feet and a chord bearing of N 37°10′04″ E and a distance of 66.53 feet; thence N 26°32′53″ E a distance of 65.34 feet;

Thence a distance of 190.81 feet along a curve to the right having a radius of 195.00 feet and a chord bearing of N 55°11′32″ E a distance of 183.29 feet; thence N 83°13′28″ E a distance of 200.71 feet;

Thence a distance of 230.48 feet along a curve to the left having a radius of 400.00 feet and a chord bearing of N 66°43′02″ E a distance of 227.31 feet;

N 50°12′36″ E a distance of 95.72 feet,

N 45°41′36″ E a distance of 138.30 feet,

N 42°02′23″ E a distance of 27.43 feet,

N 84°30′19″ W a distance of 201.94 feet,

S 35°41′41″ W a distance of 23.89 feet,

N 52°02′10″ W a distance of 52.57 feet,

S 63°45′23″ W a distance of 185.49 feet,

N 40°47′01″ W a distance of 80.60 feet,

N 38°21′38″ W a distance of 74.36 feet,

N 26°41′16″ W a distance of 47.22 feet,

N 21°22′22″ W a distance of 50.11 feet,

N 16°05′31″ W a distance of 27.86 feet,

N 12°06′35″ W a distance of 33.42 feet,

S 55°06′13″ W a distance of 92.80 feet,

S 42°24′15″ W a distance of 95.10 feet,

S 68°50′25″ W a distance of 177.76 feet,

N 31°18′52″ W a distance of 260.76 feet,

N 59°46′58″ E a distance of 281.46 feet,

S 67°22′07″ E a distance of 182.93 feet,
N 07°11′27″ W a distance of 21.98 feet;
Thence a distance of 90.82 feet along a curve to the right having a radius of 343.24 feet and a chord bearing of N 01°18′15″ E and a distance of 90.55 feet; thence N 14°53′17″ E a distance of 400.64 feet to a concrete monument 00–Y–164 having coordinates of N=610,246.3352 and E=2,486,234.5124;
Thence N 41°03′52″ W a distance of 189.93 feet to the south side of Midway Turnpike; thence with the south side of Midway Turnpike, N 62°17′33″ E a distance of 109.31 feet;
Thence a distance of 84.23 feet along a curve to the left having a radius of 220.04 feet and a chord bearing of N 53°22′36″ E and a distance of 83.72 feet; thence N 42°24′37″ E a distance of 55.09 feet;
Thence a distance of 52.98 feet along a curve to the right having a radius of 104.83 feet and a chord bearing N 56°53′20″ E and a distance of 52.42 feet; thence N 71°22′04″ E a distance of 57.71 feet;
Thence a distance of 68.12 feet along a curve to the left having a radius of 109.69 feet and a chord bearing of N 53°34′39″ E and a distance of 67.03 feet; thence N 36°34′16″ E a distance of 62.79 feet;
Thence a distance of 164.30 feet along a curve to the right having a radius of 164.16 feet and a chord bearing of N 66°37′43″ E and a distance of 157.53 feet; thence a distance of 127.85 feet along a curve to the left having a radius of 110.10 feet and a chord bearing of
N 64°41′34″ E a distance of 120.79 feet,
N 31°29′41″ E a distance of 146.26 feet;
Thence a distance of 125.97 feet along a curve to the right having a radius of 136.27 feet and a chord bearing of N 57°58′42″ E a distance of 121.53 feet;
N 84°27′43″ E a distance of 41.81 feet;
Thence a distance of 222.36 feet along a curve to the left having a radius of 283.62 feet and a chord bearing of N 62°00′08″ E a distance of 216.70 feet;
N 39°32′32″ E a distance of 21.09 feet;
Thence a distance of 148.42 feet along a curve to the right having a radius of 144.69 feet and a chord bearing of N 68°55′47″ E a distance of 141.99 feet;
S 81°40′59″ E a distance of 126.15 feet;
Thence a distance of 196.21 feet along a curve to the left having a radius of 453.57 feet and a chord bearing of N 85°55′28″ E a distance of 194.68 feet;
N 70°37′33″ E distance of 150.03 feet;
Thence leaving said south side of Midway Turnpike S 34°14′27″ East a distance of 1339.32 feet to the Point of Beginning, and containing 81.33 acres, more or less.

Exclusion Area No. 2

Beginning at concrete monument 00–Y–166 having coordinates of N=608,866.1167 and E=2,491,528.3694, said point being S 53°08′ East a distance of 1175 feet from the centerline intersection of Second Street and Scarboro Road; thence along the following bearings and distances running 5 feet outside and parallel to a chain link fence to a point located by iron pins at each of the calls:
S 11°57′51″ E a distance of 190.83 feet,
S 20°58′39″ W a distance of 162.04 feet,
N 82°41′43″ W a distance of 326.09 feet,
N 20°55′08″ W a distance of 161.87 feet,
N 70°55′21″ W a distance of 256.95 feet,
N 21°25′10″ E a distance of 138.58 feet,
S 70°56′19″ E a distance of 255.01 feet,
N 29°13′41″ E a distance of 153.55 feet,
N 36°55′00″ E a distance of 77.89 feet to concrete monument 00–Y–165 set having coordinates of N=609,046.7759 and E=2,491,299.2370;
Thence S 51°44′46″ E a distance of 291.79 feet to the Point of Beginning, said parcel containing 4.36 acres, more or less.

The net area included within the boundary to be posted for 229 security purposes is 3,017.81 acres, more or less.

[FR Doc. 04–24939 Filed 11–8–04; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–19–000]

Golden Spread Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc., Roosevelt County Electric Cooperative, Inc., Complainants v. Southwestern Public Service Company, Respondent; Notice of Complaint

November 3, 2004.

Take notice that on November 2, 2004, Golden Spread Electric Cooperative, Inc. (Golden Spread) Lyntegar Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc. (collectively referred to as the Cooperative Customer Group) filed a Complaint Requesting Investigation and Hearing of Cost-Based Rates and Fuel Adjustment Clause Charges, and Establishment of Refund Effective Date against Respondent against Southwestern Public Service Company (SPS). The Cooperative Customer Group states that (1) SPS' cost-based rates for full and partial requirements service are excessive, are not just and reasonable and are unduly discriminatory or preferential; and (2) SPS has historically and continues to violate the applicable fuel charge adjustment clause (FCAC) provisions of the FERC-filed rate schedules applicable to each of its customers, and the Commission's FCAC Regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 2, 2004.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3077 Filed 11–8–04; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket Nos. II–2002–05, –06, –11; FRL–7835–8]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for the Keyspan Generation Far Rockaway Station, Motiva Enterprises, LLC, and the New York City Department of Environmental Protection North River Water Pollution Control Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final orders, addressing three State operating permits.

SUMMARY: This document announces that the EPA Administrator has addressed four citizen petitions asking

EPA to object to operating permits issued to three facilities by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied three petitions submitted by the New York Public Interest Research Group (NYPIRG) to object to the state operating permits issued to the Keyspan Generation Far Rockaway Station, Motiva Enterprises, LLC, and the New York City Department of Environmental Protection (NYCDEP) North River Water Pollution Control Plant. Additionally, the Administrator has partially granted and partially denied a petition submitted by the NYCDEP, requesting our objection to its own operating permit for the North River plant. Pursuant to section 505(b)(2) of the Clean Air Act (Act), petitioners may seek judicial review of those portions of the petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final orders, the petitions, and other supporting information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final orders are available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2002.htm.*

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to state operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

I. Keyspan

On July 5, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the Keyspan Generation Far Rockaway Station. On September 24, 2004, the Administrator issued an order partially granting and partially denying the Keyspan petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must determine whether to retain or delete a condition relating to burning waste-oil in the utility boiler. If this condition is to be retained, the NYSDEC must incorporate additional requirements, and discuss applicability in the corresponding Permit Review Report. The order also explains EPA's reasons for denying NYPIRG's remaining claims.

II. Motiva

On May 23, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for Motiva Enterprises, LLC. On September 24, 2004, the Administrator issued an order partially granting and partially denying the Motiva petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must: (1) Provide information on the methods used in creating the emission statement; (2) prescribe opacity monitoring for the Vapor Recovery Unit; (3) include additional requirements that are applicable to bulk gasoline terminals; (4) state that reporting is due semi-annually for the facility's average daily gasoline throughput; (5) specify which type of control is in place at the Fixed Roof storage tanks; (6) specify that a record will be generated whenever activities pertaining to the replacement of any liquid mounted seal are performed; (7) state that facility is subject to a gasoline throughput limit of 526,900,000 gallons/yr; and (8) reference emission calculations together with any applicable technical basis. The order also explains EPA's reasons for denying NYPIRG's remaining claims.

III. North River

On October 1 and 4, 2002, the EPA received petitions from NYPIRG and the NYCDEP, requesting that EPA object to the issuance of the title V operating permit for the NYCDEP North River Water Pollution Control Plant. On September 24, 2004, the Administrator issued an order partially granting and partially denying both North River petitions. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Move the hydrogen sulfide requirements to the state-only enforceable portion of the permit; (2) include requirements for exempt activities where applicable; (3) require annual certification of federally enforceable terms as directed by EPA; (4) include the SIP ''excuse'' provision codified at 6 NYCRR section 201.5(e); (5) include additional monitoring for NO_X from the engines; (6) specify the degree of air cleaning required by 6 NYCRR section 212.4(a) for the wastewater, sludge and miscellaneous processes, and include appropriate monitoring; and (7) clarify the applicability of 6 NYCRR section 230.2 and include appropriate permit conditions. In addition, several issues require the NYSDEC to provide a revised statement of basis that: (1) Explains how the sulfur in fuel monitoring is consistent with the city's contract; (2) clarifies the rationale for including multiple monitoring requirements for opacity from the engines; (3) clarifies the applicability of exempt and trivial activities as well as the general opacity regulation; (4) explains its reasons for concluding the facility is a non-industrial POTW; and (5) clarifies the applicability of CAA section 112(r). The order also explains EPA's reasons for denying the petitioners' remaining claims.

Dated: November 1, 2004.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 04–24923 Filed 11–8–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRC–7835–1]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Techlaw, Incorporated and its Subcontractors

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for comment.

SUMMARY: The U.S. Environmental Protection Agency (''EPA'') hereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose to TechLaw, Inc. of San Francisco, California, and its subcontractors, Superfund confidential business information (''CBI'') submitted to EPA Region 9.

DATES: Comments may be submitted by November 24, 2004.

ADDRESSES: Comments should be sent to: Environmental Protection Agency, Region 9, Peggy De La Torre (PMD–8), 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Peggy De La Torre, Policy & Management Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3717.

Notice of Required Determinations, Contract Provisions and Opportunity to Comment: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCAL'') as amended, (commonly known as ''Superfund'') requires completion of enforcement activities at Superfund sites in concert with other site events. EPA has entered into a contract, No. GS–10F–0168J, delivery order No. 0901, with TechLaw, Inc. for Superfund Enforcement Support Services-Emergency Response Enforcement (''SESS9–ERE''). These services will be provided to EPA by SAIC and its subcontractors: Jonas and Associates, Inc. of Martinez, CA and PPC Land Consultants, Inc. of Dixon, CA. EPA has determined that disclosure of CBI to SAIC employees, and its subcontractors' employees, is necessary in order that SAIC may carry out the work required by that contract with EPA. The information EPA intends to disclose includes submissions made by Potentially Responsible Parties to EPA in accordance with EPA's enforcement activities at Superfund sites. The information would be disclosed to the contractor and its subcontractor for any of the following reasons: to assist with document handling, inventory, and indexing; to assist with document review and analysis; to verify completeness; and to provide technical review of submittals. The contract complies with all requirements of 40 CFR 2.310(h)(2). EPA Region 9 will require that each SAIC employee and subcontractor employee sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by SAIC and its subcontractors for performance of the work required by the contract or upon completion of the contract or subcontract.

Dated: October 25, 2004.

Nancy Lindsay,

Deputy Director, Superfund Division, Region 9.

[FR Doc. 04–24925 Filed 11–8–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7836–2]

Workshop on Lead in Drinking Water in Schools and Child Care Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is holding a workshop to discuss issues concerning lead in drinking water in schools and child care facilities. The EPA recognizes that lead in drinking water most often occurs within the distribution system and the Agency is especially concerned about its effects on vulnerable populations, such as children. The EPA is hosting this workshop to discuss experiences and options with national experts in drinking water and children's health and education. The workshop participants will discuss best practices to promote awareness and water testing in schools and child care facilities, linkages between water suppliers and school officials, school and child care facilities participation in voluntary programs, and the Lead and Copper Rule and Lead Contamination Control Act as they apply to schools and child care facilities. The EPA has been working with the Department of Education to plan this event.

DATES: The workshop will be held on December 7, 2004, 8:30 a.m. to 5:30 p.m. Eastern time.

ADDRESSES: The workshop will be held at the Wyndham Washington Hotel, 1400 M Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: To attend this workshop as an observer registration is required. Attendance as an observer is limited to the first 50 people to register. To register by phone, please contact Sarah Koppel at 202–564–3859, or register by e-mail at *koppel.sarah@epa.gov.* For administrative meeting information and technical information contact Lisa Christ, Office of Water, Office of Ground Water and Drinking Water, U.S. EPA, 1200 Pennsylvania Ave., NW., (MC 4606M), Washington, DC 20460, at 202–564–8354 or by e-mail at *christ.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: There is no charge for attending this workshop as an observer, but seats are limited, so register as soon as possible. Any person needing special accommodations at the meeting, including wheelchair access, should make this known at the time of registration.

Dated: November 1, 2004.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–24922 Filed 11–8–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7835–4]

Air Quality Criteria Document for Lead

AGENCY: Environmental Protection Agency.

ACTION: Notice; call for information.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Office of Research and Development's National Center for Environmental Assessment (NCEA) is updating and revising, where appropriate, the Air Quality Criteria for Lead, EPA–600/8–83/028aF–dF, published in June 1986, and the associated supplement (EPA–600/8–89/049F) published in 1990. Interested parties are invited to assist the EPA in developing and refining the scientific information base for updating the Air Quality Criteria for Lead by submitting research studies that have been published, accepted for publication, or presented at a public scientific meeting.

DATES: The sixty-day period for submission of this information begins November 15, 2004, and ends January 15, 2005.

ADDRESSES: Information may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the section of this notice entitled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For details on the period for submission of research information from the public, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Robert Elias, Ph.D., NCEA, facsimile: 919–541–1818 or e-mail: *elias.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Under the Clean Air Act, lead is one of six principal (or ''criteria'') pollutants for which EPA has established National Ambient Air Quality Standards (NAAQS). Periodically, EPA reviews the scientific basis for these standards by preparing an Air Quality Criteria Document (AQCD). The AQCD is the scientific basis for the additional technical and policy assessments that form the basis for EPA decisions on the adequacy of a current NAAQS and the appropriateness of new or revised standards. One of the first steps in this process is to announce the beginning of this periodic NAAQS review and the start of the development of the AQCD, by requesting that the public submit scientific literature that they want to bring to the attention of the Agency as it begins this process. The Clean Air Scientific Advisory Committee (CASAC), a review committee mandated by the Clean Air Act and part of the EPA's Science Advisory Board (SAB), is charged with independent expert scientific review of EPA's draft AQCDs. As the process proceeds, the public will have opportunities to review and comment on the draft lead AQCD. These opportunities will also be announced in the **Federal Register**.

Since completion of the 1986 Air Quality Criteria for Lead and the associated 1990 Lead Supplement, EPA has continued to follow the scientific research on lead exposure and its effects on health and the environment and has gathered some appropriate studies. The Agency is interested in additional new information, particularly concerning the effects of lead on humans and on laboratory animals, as well as on vegetation, both in agricultural ecosystems (crops) and in natural ecosystems. EPA also seeks recent information in other areas of lead research such as chemistry and physics, sources and emissions, analytical methodology, transport and transformation in the environment, and ambient concentrations. This and other selected literature relevant to a review of the NAAQS for lead will be assessed in the forthcoming revised Lead AQCD. One or more drafts of the lead AQCD are expected to be made available by EPA for public comment and CASAC review during 2005 and/or possibly 2006. In addition, other opportunities for submission of new peer-reviewed, published (or in-press) papers will be possible as part of public comment on the draft documents that will be reviewed by CASAC.

EPA has established an official public docket for information pertaining to the revision of the lead criteria document, Docket ID No. ORD–2004–0018. The official public docket is the collection of materials, excluding Confidential Business Information (CBI) or other information whose disclosure is restricted by statute, that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

An electronic version of the official public docket is available through EPA's electronic public docket and comment system, E-Docket. You may use E-Docket at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to view those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in E-Docket. Information claimed as CBI and other information with disclosure restricted by statute, also not included in the official public docket, will not be available for public viewing in E-Docket. Copyrighted material also will not be placed in E-Docket but will be referenced there and available as printed material in the official public docket.

Persons submitting information should note that EPA's policy makes the information available as received and at no charge for public viewing at the EPA Docket Center or in E-Docket. This policy applies to information submitted electronically or in paper, except where restricted by copyright, CBI, or statute.

Unless restricted as above, information submitted on computer disks that are mailed or delivered to the docket will be transferred to E-Docket. Physical objects will be photographed, where practical, and the photograph will be placed in E-Docket along with a brief description written by the docket staff.

You may submit information electronically, by mail, by facsimile, or by hand delivery/courier. To ensure proper receipt by EPA, include the appropriate docket identification number with your submission. Please adhere to the specified submitting period. Information received or submitted past the close date will be marked ''late'' and may only be considered if time permits.

If you submit information electronically, EPA recommends that you include your name, mailing address, and an e-mail address or other details for contacting you. Also include these contact details on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the person submitting the information and allows EPA to contact you in case the Agency cannot read what you submit due to technical difficulties or needs to clarify issues raised by what you submit. If EPA cannot read what you submit due to technical difficulties and cannot contact you for clarification, it may delay or prohibit the Agency's consideration of the information.

To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and key in Docket ID No. ORD–2004–0018. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact details if you are merely viewing the information.

Information may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov*, Attention Docket ID No. ORD–2004–0018. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail directly to the docket without going through EPA's E-Docket, EPA's e-mail system automatically captures your e-mail address, and it becomes part of the information in the official public docket and is made available in EPA's E-Docket.

You may submit information on a disk or CD ROM mailed to the OEI Docket mailing address. Files will be accepted in WordPerfect, Word, or ASCII file format. Avoid the use of special characters and any form of encryption.

If you provide information in writing, please submit one unbound original, with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Dated: November 3, 2004.

John Vandenberg,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 04–24924 Filed 11–8–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

November 2, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 9, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov,* and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has requested emergency OMB review of this collection with an approval by November 12, 2004.

OMB Control Number: 3060–0185.

Type of Review: Revision of a currently approved collection.

Title: Section 73.3613, Filing of Contracts.

Form Number: N/A.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,300.

Estimated Hours per Response: 0.25 to 0.5 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 950 hours.

Total Annual Cost: $80,000.

Needs and Uses: In June 2003, the Commission adopted changes to 47 CFR Section 73.3613 and the FCC's attribution rules. As a result, radio stations must now file agreements for the sale of advertising time (*i.e.*, ''Joint Sales Agreements'' or ''JSAs'') that result in attribution under the Commission's multiple ownership rules. This section also requires certain contracts to be retained at the station and made available for inspection by the Commission upon request.

On June 24, 2004, the Court issued an *Opinion and Judgment* (''*Remand Order*'') in which it upheld certain aspects of the new ownership rules, including the attribution of JSAs among radio stations, while requiring further explanation for certain other aspects of the new rules. The Court stated that its prior stay of the new rules would remain in effect pending the outcome of the remand proceeding. The Commission has not yet responded to the *Remand Order,* but in the meantime the Commission filed a petition for rehearing requesting that the Court lift the stay partially—*i.e.*, with respect to the radio ownership and JSA attribution rules which the Court's *Remand Order* upheld.

On September 3, 2004, the Court issued an Order (''*Rehearing Order*'') which partially granted the Commission's petition for rehearing, thus lifting the stay of the revised radio ownership and JSA attribution rules. As a result of the *Rehearing Order,* the Commission's revised radio ownership and JSA attribution rules took effect on September 3, 2004. Implementation of the new radio ownership and JSA attribution rules, as required by the *Rehearing Order,* triggers the requirement for certain licensees to begin filing JSAs.

47 CFR 73.3613 requires licensees of television and radio broadcast stations to file with the Commission: (a) Contracts relating to ownership or control and personnel; and (b) time brokerage agreements that result in arrangements being counted under the Commission's multiple ownership rules. Television stations also must file network affiliation agreements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24958 Filed 11–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 29, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 10, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Radio Survey for the Localism Task Force.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,151.

Estimated Time per Response: 3–6 hours.

Frequency of Response: One time only.

Total Annual Burden: 5,200 hours (average).

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 20, 2003, FCC Chairman Michael K. Powell launched the ''Localism in Broadcasting'' initiative aimed at enhancing localism provided by radio and television broadcasters. Part of that initiative was the formation of the Localism Task Force (LTF). The LTF is tasked with providing the Commission with recommendations to strengthen localism in broadcasting. Among other things, the Chairman directed the LTF to conduct studies to measure localism and the efficacy of the Commission's localism-related rules so that any proposed regulations or actions will best serve the Commission's long-standing goal of promoting localism.

In order to estimate the amount of programming on broadcast radio that contributes to localism, the Commission will record segments of radio broadcasts, totaling two hours per station, from 1151 randomly selected radio stations across the United States. These recorded segments will be transcribed and the contents will be tabulated and organized according to identified program categories. The Commission will ask each radio broadcaster whose airtime was recorded to review the transcript and categorization applicable to that broadcaster's station(s). These survey recordings, along with the transcript and categorization, will be available on the Internet, and radio stations can provide their responses by linking to a Web site. In addition, the Commission will seek related information pertaining to the broadcaster's public service. For those respondents that do not have Internet access, the Commission will provide an alternative means of transmitting the survey results and receiving responses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24959 Filed 11–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 2, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 10, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0287.

Title: Section 78.69, Station Records.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,618.

Estimated Time per Response: 0.5 hours per week (26 hours per year).

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 42,068 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 78.69 requires that licensees of cable CARS stations maintain various records, including but not limited to records pertaining to transmissions, unscheduled interruptions to transmissions, maintenance, observations, inspections and repairs. Station records are required to be maintained for a period of not less than two years. The records kept pursuant to Section 78.69 provide for a history of station operations and are reviewed by Commission staff during field investigations to ensure that proper operation of the stations is being conducted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24960 Filed 11–8–04; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 2, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this

opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before January 10, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at 202–418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0688.

Title: Abbreviated Cost-of-Service Filing for Cable Network Upgrades.

Form Number: FCC Form 1235.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 50.

Estimated Time per Response: 10–20 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 750 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: FCC Form 1235 is an abbreviated cost of service filing for significant network upgrades that allows cable operators to justify rate increases related to capital expenditures used to improve rate-regulated cable services. The FCC Form 1235 is reviewed by the cable operator's respective local franchise authority.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24961 Filed 11–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 28, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 10, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0653.

Title: Section 64.703(b) and (c), Consumer Information—Posting by Aggregators.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 56,200.

Estimated Time per Response: 3.67 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 206,566 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: As required by 47 U.S.C. 226(c)(1)(A), 47 CFR 64.703(b) provides that aggregators (providers of telephone to the public or transient users) must post in writing, on or near such phones, information about the pre-subscribed operator services, rates, carrier access, and the FCC address to which consumers may direct complaints. Section 64.703(c) establishes a 30-day outer limit for updating the posted consumer information when an aggregator has changed the pre-subscribed operator service provider (OSP). Consumers will use this information to determine whether they wish to use the services of the identified OSP.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24962 Filed 11–8–04; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 26, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction

Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 9, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53, FCC 04–194.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 11,027,600.

Estimated Time per Response: 1–11 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; third party disclosure.

Total Annual Burden: 115,645,100 hours.

Total Annual Cost: $37,105,283.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 12, 2004, the Commission released an Order, Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53, FCC 04–194, adopting rules to prohibit the sending of commercial messages to any address referencing and Internet domain name associated with wireless subscriber messaging services, unless the individual addressee has given the sender express prior authorization. The information collection requirements consist of 47 CFR 63.3100 (a)(4), (d), (e) and (f).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24963 Filed 11–8–04; 8:45 am]

BILLING CODE 6712–10–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 29, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 9, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0313.

Title: Section 76.1701, Political File.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,375.

Estimated Time per Response: 0.25 hours (1.0 hours/cable system).

Frequency of Response: Recordkeeping.

Total Annual Burden: 5,375 burden hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.1701 requires every cable television system to keep and permit public inspection of a complete record (political file). The file contains all requests for cablecast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The disposition includes the schedule of time purchased, when the spots actually aired, the rates charged, and the classes of time purchased. Also, when free time is provided for use by or on behalf of candidates, a record of the free time provided is to be placed in the political file.

OMB Control Number: 3060–0968.

Title: Slamming Complaint Form.

Form Number: FCC 501.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 3,600.

Estimated Time per Response: 15 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 900 hours.

Total Annual Cost: None.

Privacy Impact Assessment: Yes.

Needs and Use: FCC Form 501, Slamming Complaint Form, is designed to assist consumers in filing slamming complaints with the Commission. The form is devised to ensure complete and efficient submission of necessary information to process slamming complaints. FCC Form 501 remains available to consumers electronically and in hard copy. The Commission will use this information to provide redress to consumers and to act against companies engaged in this illegal practice as soon as possible.

OMB Control Number: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 54,497.

Estimated Time per Response: 0.004 hours (15 seconds)–3 hours (avg).

Frequency of Response: Recordkeeping; On occasion reporting requirement; Third Party disclosure.

Total Annual Burden: 1,851,600 hours.

Total Annual Costs: $4,360,500.

Privacy Impact Assessment: Yes.

Needs and Uses: On March 11, 2003, the Do-Not-Call Implementation Act (Do-Not-Call Act) was signed into law requiring the Commission to issue a final rule in its ongoing TCPA proceeding within 180 days of March 11, 2003, and to consult and coordinate with the Federal Trade Commission (FTC) to ''maximize consistency'' with the rule promulgated by the FTC in 2002. On March 25, 2003, the FCC released a *Further Notice of Proposed Rulemaking (FNPRM)* seeking comment on the Commission's requirements under the Do-Not-Call Act. On July 3, 2003, the Commission released a *Report and Order (2003 TCPA Order)*, the Commission revised the current TCPA rules and adopted new rules to provide consumers with several options for avoiding unwanted telephone solicitations. The Commission established a national do-not-call registry for consumers who wish to avoid most unwanted telemarketing calls. This national do-not-call registry will supplement the current company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. The FCC also adopted a new provision to permit consumers to provide permission to call to specific companies by an express written agreement. The TCPA rules exempt from the ''do-not-call'' requirements nonprofit organizations, companies with whom consumers have an established business relationship, and calls to persons with whom the telemarketer has a personal relationship. Any company, which is asked by a consumer, including an existing customer, not to call again must honor that request for five (5) years.

The Commission retains the current calling time restrictions of 8 a.m. until 9 p.m. On September 21, 2004, the Commission released an *Order (2004 Safe Harbor Order)*, establishing a limited safe harbor in which persons will not be liable for placing autodialed and prerecorded message calls to numbers ported from a wireline service within the previous 15 days. The Commission also *amended* its existing national do-not-call registry safe harbor to require telemarketers to scrub their lists against the do-not-call database every 31 days.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24964 Filed 11–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Tuesday, November 9, 2004

November 2, 2004.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 9, 2004, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	International	The International Bureau will present a report on the recently completed ITU World Telecommunication Standardization Assembly (WTSA) and the Commission's participation in the conference.
2	Wireless Telecommunications	*Title:* The 4.9 GHz Band Transferred from Federal Government Use (WT Docket No. 00–32). *Summary:* The Commission will consider a Memorandum Opinion and Order regarding changes to the rules applicable to the 4.940–4.990 GHz Band.
3	Wireline Competition	*Title:* Local Telephone Competition and Broadband Reporting (WC Docket No. 04–141). *Summary:* The Commission will consider a Report and Order regarding modifications to and extension of its Form 477 local competition and broadband data gathering program.
4	Wireline Competition	*Title:* Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission (WC Docket No. 03–211). *Summary:* The Commission will consider a Memorandum Opinion and Order concerning Vonage's Petition for Declaratory Ruling regarding its DigitalVoice service in Minnesota.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu*. Audio and video tapes of this meeting can be purchased from CACI Productions, 14151 Park Meadow Drive, Chantilly, VA 20151, (703) 679–3851.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio

tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–25056 Filed 11–5–04; 12:04 pm]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

[Docket No. OP–1216]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved the 2005 fee schedules for Federal Reserve priced services and electronic access and a private-sector adjustment factor (PSAF) for 2005 of $161 million. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF. The Board has also approved changing the earnings credit rate on clearing balances from 90 percent of the three-month Treasury bill rate to 80 percent of the three-month Treasury bill rate.

DATES: The new fee schedules become effective January 3, 2005, except Fedwire funds transaction fees, which become effective July 1, 2005. The change in the earnings credit rate on clearing balances becomes effective January 6, 2005.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Jack K. Walton II, Assistant Director, (202/452–2660); Gregory E. Cannella, Financial Services Analyst, (202/530–6214), Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF and earnings credits on clearing balances: Gregory L. Evans, Manager, Financial Accounting, (202/452–3945); or Brenda Richards, Financial Project Leader, (202/452–2753); or Jonathan Mueller, Financial Analyst, (202/530–6291), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) *only,* please call 202/263–4869. Copies of the 2005 fee schedules for the check service are available from the Board, the Federal Reserve Banks, or the Reserve Banks' financial services Web site at *http://www.frbservices.org.*

SUPPLEMENTARY INFORMATION:

I. Priced Services

A. *Discussion*—From 1994 through 2003, the Reserve Banks recovered 97.8 percent of their total costs for providing priced services, including special project costs, imputed expenses, and targeted after-tax profits or return on equity (ROE).[1]

Table 1 summarizes 2003 actual, 2004 estimated, and 2005 budgeted cost recovery rates for priced services. Cost recovery is estimated to be 94.6 percent in 2004 and budgeted to be 100.1 percent in 2005. The performance of the check service heavily influences the aggregate cost recovery rates, and accounts for approximately 80 percent of the total cost of priced services. The electronic services (FedACH, Fedwire funds and national settlement (NSS), and Fedwire securities) account for approximately 20 percent of costs, while the noncash collection service represents a *de minimis* amount.

TABLE 1.—PRO FORMA COST AND REVENUE PERFORMANCE [a]

[$ millions]

Year	1 [b] Revenue	2 [c] Total expense	3 Net income (ROE) [1–2]	4 [d] Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2003[e]	881.7	931.3	−49.6	104.7	85.1%
2004 (Estimate)	910.8	850.6	60.2	112.4	94.6%
2005 (Budget)	900.6	796.9	103.7	102.9	100.1%

[a] Calculations in this table and subsequent pro forma cost and revenue tables may be affected by rounding.

[b] Revenue includes net income on clearing balances (NICB). For 2003, clearing balances, net of imputed reserve requirements and balances used to finance priced services assets, are assumed to be invested in three-month Treasury bills. For 2004 and 2005, net clearing balances are assumed to be invested in a broader portfolio of investments. Based on the historical average return on the broader portfolio, income is imputed as a constant return over the rate used to determine the cost of clearing balances. NICB equals the imputed income from these investments less earnings credits granted to holders of clearing balances. For 2003, the cost of clearing balances was based on the federal funds rate, and for 2004 and 2005 the cost is based on the discounted three-month Treasury bill rate.

[c] The calculation of total expense includes operating, imputed, and other expenses. Imputed and other expenses include taxes, FDIC insurance, Board of Governors' priced services expenses, the cost of float, and interest on imputed debt, if any. Credits or debits related to the accounting for pensions under FAS 87 are also included.

[d] Target ROE is the after-tax ROE included in the PSAF.

[e] 2003 calculations include special cash services, which are no longer offered by the Reserve Banks.

Table 2 presents an overview of the 2003 actual, 2004 budget, 2004 estimate, and 2005 budget cost recovery performance by priced service.

[1] These imputed expenses, such as taxes that would have been paid, and the return on equity that would have to be earned had the services been furnished by a private business firm, are referred to as the private-sector adjustment factor (PSAF). The ten-year recovery rate is based upon the pro forma income statements for Federal Reserve Banks' priced services published in the Board's Annual Report. Beginning in 2000, the PSAF has included additional financing costs associated with pension assets attributable to priced services. This ten-year cost recovery rate has been computed as if these costs were not included in the PSAF calculations prior to 2000. If these costs were included in the calculations, and assuming that the Reserve Banks would not have made any contemporaneous cost or revenue adjustments, the ten-year recovery rate would be 96.9 percent.

TABLE 2.—PRICED SERVICES COST RECOVERY

[percent]

Priced service	2003	2004 Budget	2004 Estimate	2005 Budget [a]
All services	85.1	92.9	94.6	100.1
Check	82.7	91.5	93.5	100.0
FedACH	100.3	99.7	101.0	100.4
Fedwire funds & NSS	97.4	100.9	98.1	100.0
Fedwire securities	106.1	104.0	102.4	102.3
Noncash collection	123.1	112.0	110.2	76.0

[a] 2005 budget figures reflect the latest data from Reserve Banks. Reserve Banks will report final budget data to the Board by the end of November 2004.

1. *2004 Estimated Performance*—In 2004, the Reserve Banks estimate that they will recover 94.6 of the costs of providing priced services, including imputed expenses and targeted ROE, compared with a targeted recovery rate of 92.9 percent, as shown in table 2. The Reserve Banks exceeded the 2004 budget targets for the check and FedACH services. The 98.1 percent estimated recovery rate for the Fedwire funds and national settlement service, however, is below the targeted recovery rate of 100.9 percent. This difference is due to both lower revenue, associated with less-than-anticipated volume growth, and greater costs, associated with a movement to an Internet-based distribution channel for these and other electronic services. While achieving full cost recovery, the Fedwire securities and noncash collection services' shortfalls relative to the budgeted recovery rates are primarily attributed to lower-than-expected volume. Although the estimated 2004 overall recovery rate for priced services is below 100 percent, the Reserve Banks estimate that they will fully recover actual and imputed expenses and earn net income of $60.2 million compared with a targeted ROE of $112.4 million. This ROE shortfall is largely driven by the accrual of one-time costs associated with the second round of Reserve Banks' check restructuring efforts, lower-than-expected check service revenues due to a greater-than-anticipated decline in check volumes, and by lower-than-expected net income from clearing balances (NICB).[2]

Recent anecdotal information from the industry suggests that check use in the United States continues to decline.[3] Additionally, an increasing proportion of checks are being converted to automated clearinghouse transactions at retail lockboxes, which results in fewer interbank checks. As a result of these factors, check volume processed by the Reserve Banks has declined about 10 percent year-to-date. In response to volume declines, the Reserve Banks have continued to restructure their check processing operations and in 2004 incurred additional one-time costs associated with further restructurings in 2005. This initiative will provide ongoing operational and cost efficiencies for the Reserve Banks and is expected to enable the Reserve Banks to achieve full cost recovery in 2005.

2. *2005 Projected Performance*—For 2005, the Reserve Banks project a priced services cost recovery rate of 100.1 percent. The 2005 fees for priced services are projected to result in a net income of $103.7 million or $0.8 million above the targeted ROE. The primary risks to the Reserve Banks' ability to achieve their budget targets are (1) greater-than-expected costs associated with the check restructuring initiatives, (2) a greater falloff in the Reserve Banks' check volume than the projected 15.8 percent decrease, and (3) a greater-than-expected shift from higher margin products to lower margin products. In light of these risks and the changing payments landscape, the Reserve Banks will continue to modify their business and operational strategies to improve efficiency, reduce excess capacity and other costs, and position themselves to achieve their financial and payment system objectives and statutory requirements over the long term.

3. *2005 Pricing*—The following summarizes the changes in the Reserve Banks' fee structures and levels for priced services in 2005, and indicates the overall experience with prices in each service line since 1996: [4]

Check

- The Reserve Banks will raise fees for forward-collection check products 7.9 percent, return-check products 8.1 percent, and payor bank check products 2.8 percent compared with January 2004 fees.
- With the 2005 fee changes, the price index for the check service will have increased 40 percent since 1996.

FedACH

- The Reserve Banks will retain fees at their current levels.
- With the 2005 fee changes, the price index for the FedACH service will have decreased 66 percent since 1996.

Fedwire funds and national settlement

- The Reserve Banks will increase Fedwire funds per transfer fees by one cent in all volume tiers, effective July 1, 2005.
- With the 2005 fee changes, the price index for the Fedwire funds and national settlement service will have decreased 59 percent since 1996.

Fedwire Securities

- The Reserve Banks will increase the off-line surcharge from $28 to $33 per transfer and increase the joint custody surcharge from $30 to $35. The Reserve Banks will retain all other fees at their current levels.
- With the 2005 fee changes, the price index for the Fedwire securities service will have decreased 43 percent since 1996.

[2] The first round of the Reserve Banks' check restructuring initiative will have reduced Federal Reserve check processing locations from 45 to 32 sites and streamlined check adjustments functions by the end of 2004. Additionally, in August 2004, the Reserve Banks announced further changes to increase the efficiency of their check processing operations and will reduce further the number of check operations from 32 to 23 sites by early 2006. (*See http://www.federalreserve.gov/boarddocs/press/other/2004/20040802/default.htm.*)

[3] The Federal Reserve's 2001 retail payments research indicated that check use began declining in the mid 1990s. See Gerdes, Geoffrey R. and Jack K. Walton II, ''The Use of Checks and Other Noncash Payment Instruments in the United States,'' Federal Reserve Bulletin, August 2002, pp. 360–374. (*See http://www.federalreserve.gov/pubs/bulletin/default.htm.*) This study is being updated and the results are forthcoming by early December 2004.

[4] Data elements used in calculating the price index for 2003 and previous years include explicit fee revenue from priced services and volumes associated with those services. For 2004 and 2005, the year-over-year percentage changes are based on comparisons of the 2003 results, 2004 estimates, and 2005 projections.

4. *2005 Price Index*—Figure 1 compares indexes of fees for the Federal Reserve's priced services with the GDP price deflator. Compared with the price index for 2004, the price index for all Federal Reserve Bank priced services is projected to increase 7.3 percent in 2005. The price index for electronic payment services (FedACH, Fedwire funds and national settlement, Fedwire securities, and electronic check products), as well as electronic access to Federal Reserve Banks' priced services, is projected to increase 2.6 percent in 2005. The price index for paper-based payment services (check and noncash collection) is expected to increase 7.9 percent in 2005. Since 1996, the price index for all priced services has increased a total of 10.6 percent.

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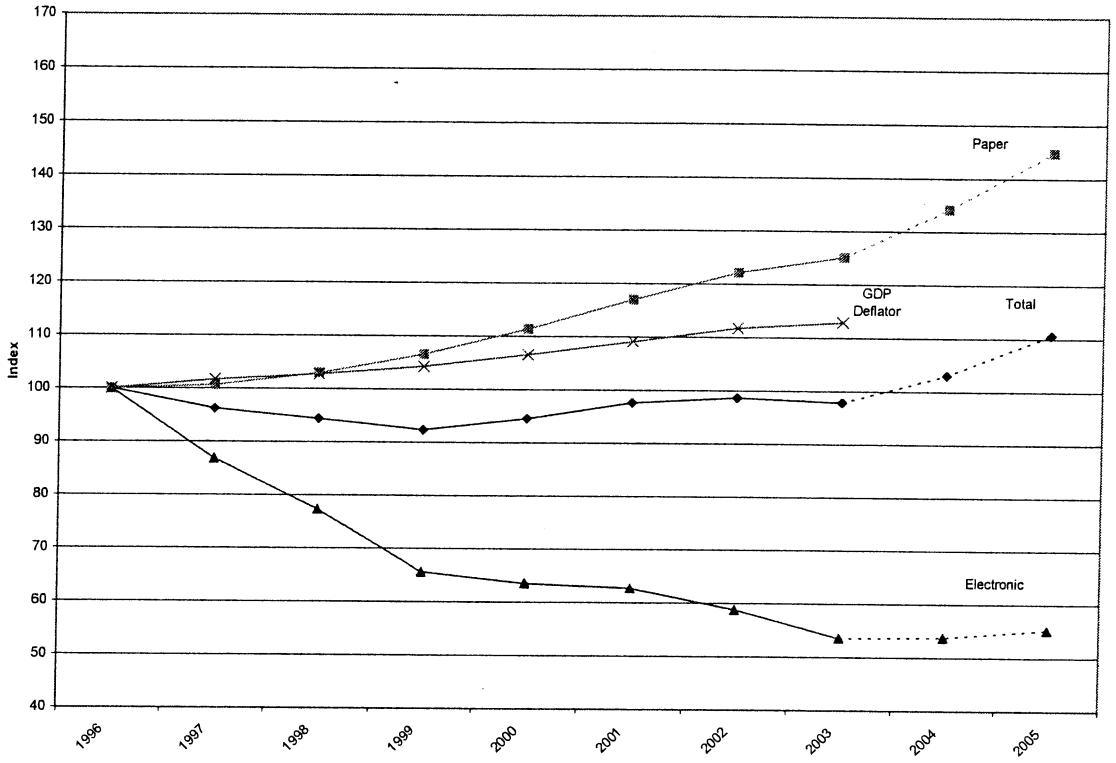
FIGURE 1
PRICE INDEXES FOR FEDERAL RESERVE PRICED SERVICES



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B. *Earnings Credits on Clearing Balances*—The Board has approved changing the rate used in calculating earnings credits on clearing balances from 90 percent of the three-month Treasury bill rate to 80 percent of the three-month Treasury bill rate, effective January 6, 2005.[5] This change will lower the Reserve Banks' cost of clearing balances.

Clearing balances were introduced in 1981, as a part of the Board's implementation of the Monetary Control Act, to facilitate access to Federal Reserve priced services by institutions that did not have sufficient reserve balances to support the settlement of their payment transactions. Beginning in 2004, the earnings credit calculation was changed from using the federal funds rate to using a percentage discount on a rolling thirteen-week average of the annualized coupon equivalent yield of three-month Treasury bills in the secondary market. Earnings credits can be used only to offset charges for priced services, are calculated monthly, and expire if not used within one year.[6]

C. *Check*—Table 3 below shows the 2003, 2004 estimate, and 2005 budgeted cost recovery performance for the check service.

TABLE 3.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1-2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2003	737.9	803.2	−65.3	89.4	82.7%
2004 (Estimate)	756.0	714.9	41.1	93.6	93.5%
2005 (Budget)	731.6	649.2	82.4	82.0	100.0%

1. *2004 Estimate*—For 2004, the Reserve Banks estimate that the check service will recover 93.5 percent of total expenses, including imputed expenses, and targeted ROE, compared with the budgeted recovery rate of 91.5 percent (see table 4). Through August 2004, the check service has recovered 94.3 percent of total costs, including imputed expenses, and targeted ROE. For the full year, the Reserve Banks expect to recover all actual and imputed expenses of providing check services and earn net income of $41.1 million, representing a portion of the targeted ROE.

TABLE 4.—CHECK 2004 BUDGET VS. 2004 ESTIMATE

[millions of dollars]

	2004 Budget	2004 Estimate	Variance
Service revenue	727.1	718.1	−9.0
NICB	43.6	37.9	−5.7
Total revenue	770.7	756.0	−14.7
Local operating costs	506.7	472.0	−34.7
Other operating costs	224.7	225.3	0.6
RPO initiatives[a]	29.0	24.0	−5.0
Pension credits	−11.4	−6.4	5.0
Total expense	749.0	714.9	−34.1
Net Income	21.7	41.1	19.4
Target ROE	93.6	93.6	

[5] Two adjustments are applied to the earnings credit rate so that the return on clearing balances at the Federal Reserve is comparable to what the depository institution would have earned had it maintained the same balances at a private-sector correspondent. The ''imputed reserve requirement'' adjustment is made because a private-sector correspondent would be required to hold reserves against the respondent's balance with it. As a result, the correspondent would reduce the balance on which it would base earnings credits for the respondent because it would be required to hold a portion, determined by its marginal reserve ratio, in the form of non-interest-bearing reserves. For example, if a depository institution held $1 million in clearing balances with a correspondent bank and the correspondent had a marginal reserve ratio of 10 percent, then the correspondent bank would be required to hold $100,000 in reserves, and it would grant credits to the respondent based on 90 percent of the balance, or $900,000. This adjustment imputes a marginal reserve ratio of 10 percent to the Reserve Bank.

The ''marginal reserve requirement'' adjustment accounts for the fact that the respondent can deduct balances maintained at a correspondent, but not the Federal Reserve, from its reservable liabilities. This reduction has value to the respondent when it frees up balances that can be invested in interest-bearing instruments, such as federal funds. For example, a respondent placing $1 million with a correspondent rather than the Federal Reserve would free up $30,000 if its marginal reserve ratio were 3 percent.

The formula used by the Reserve Banks to calculate earnings credits can be expressed as e = [b * (1–FRR) * r] + [b * (MRR) * f]

Where e is total earnings credits, b is the average clearing balance maintained, FRR is the assumed Reserve Bank marginal reserve ratio (10 percent), r is the earnings credit rate, MRR is the marginal reserve ratio of the depository institution holding the balance (either 0 percent, 3 percent, or 10 percent), and f is the average federal funds rate. A depository institution that meets its reserve requirement entirely with vault cash is assigned a marginal reserve requirement of zero.

[6] A band is established around the contracted clearing balance to determine the maximum balance on which credits are earned as well as any deficiency charges. The clearing balance allowance is 2 percent of the contracted amount, or $25,000, whichever is greater. Earnings credits are based on the period-average balance maintained up to a maximum of the contracted amount plus the clearing balance allowance. Deficiency charges apply when the average balance falls below the contracted amount less the allowance, although credits are still earned on the average maintained balance.

TABLE 4.—CHECK 2004 BUDGET VS. 2004 ESTIMATE—Continued

[millions of dollars]

	2004 Budget	2004 Estimate	Variance
Recovery rate (percent)	91.5	93.5	

[a] These are primarily check restructuring and Check 21-related expenses.

The higher-than-budgeted cost recovery is the result of lower-than-anticipated costs of $34.1 million that were partially offset by revenue shortfalls of $14.7 million. The lower costs were largely due to Reserve Banks reducing local operating costs by $34.7 million. The shortfall in revenue is due to lower-than-anticipated service revenue and NICB. Service revenue is estimated to be $9.0 million below budget due to a greater-than-anticipated decline in check volumes.

The volume of checks handled by the Reserve Banks has declined (as shown in table 5), reflecting broader market trends including alternative clearing methods and less frequent use of checks. Forward-collection check volume through August, excluding electronic fine sort volume, declined 10.5 percent.[7] For full-year 2004, the Reserve Banks estimate that forward-collection volume will decline 10.1 percent, compared with a budgeted decline of 8.9 percent. Return check volume has declined 11.7 percent through August 2004. The Reserve Banks expect that return check volume will decline 8.3 percent for the full year, compared with a budgeted decline of 7.0 percent. The Reserve Banks anticipate higher forward and return volume growth for the remainder of the year based additional new customer volumes. Board staff believes that these volume expectations for full-year 2004 may be somewhat optimistic.

TABLE 5.—PAPER CHECK PRODUCT VOLUME CHANGES

[percent]

	Budgeted 2004 change	Year-to-date change through August 2004	Estimated 2004 change
Total forward-collection[a]	−8.9	−10.5	−10.1
Forward-processed	−8.9	−9.9	−9.7
Fine-sort[a]	−8.1	−19.6	−16.7
Returns	−7.0	−11.7	−8.3

[a] These rates exclude electronic fine-sort volume. Including the electronic fine-sort product, fine-sort volume was budgeted to decline 32.9 percent in 2004 and is now estimated to decline 11.3 percent.

Electronic check presentment volumes are estimated to decline for full-year 2004, as summarized in table 6. Reserve Banks provide paying banks with electronic check data or images for approximately 41 percent of the checks they collect. Image volumes are estimated to decline 4.7 percent to approximately 1.4 billion check images, which represent about 10.7 percent of all checks collected by the Reserve Banks. The aggregate decline in electronic check data and image volumes is less than that of check volume more generally, and as a proportion of total check volume, the use of electronic check data and images is growing.

TABLE 6.—ELECTRONIC CHECK PRODUCT SHARE AND VOLUME CHANGES

	Volume change through August 2004 (percent)	Estimated 2004 change (percent)	Share of checks collected through August 2004 (percent)
Electronic check presentment[a]	−10.2	−8.3	24.2
Truncation	−11.1	−9.9	5.7
Non-truncation	−9.9	−7.7	18.6
Electronic check information	−12.7	−11.2	6.4
Images	−1.6	−4.7	10.7

[a] ECP consists of truncated and non-truncated checks. Non-truncated checks include checks presented through the MICR presentment and MICR presentment plus products.

2. *2005 Projection*—The Reserve Banks are planning to return to full cost recovery in 2005 by focusing on further opportunities to streamline check processing and administrative activities across the System, as well as expanding their Check 21-related product offerings. A number of cost reduction initiatives have been identified and are currently in various stages of implementation. In 2005, the service will achieve the full cost savings with the decisions made in

[7] Two Reserve Banks offer an electronic fine-sort product, which allows depository institutions to exchange fine-sort information electronically between themselves with paper checks to follow.

2003 and 2004 to discontinue processing checks at thirteen sites nationwide. The Reserve Banks will eliminate nine more processing sites by early 2006, reducing excess processing capacity and lowering ongoing operating costs by $14 million. Additionally, the Reserve Banks are in the process of centralizing their float management function and their pricing and product management activities.

The Reserve Banks plan to offer a comprehensive suite of Check 21-related products in 2005. These products will include image cash letter receipt and delivery products as well as substitute check printing. The pricing of these products will reflect the value to customers of later deposit deadlines and improved availability. The Reserve Banks will also modify the pricing structure of existing paper products to encourage the use of the new Check 21-related products. As the Check 21-related products mature, the pricing of paper products will be strategically raised to encourage adoption of electronic collection and presentment alternatives.

There is also a continuing effort in 2005 to set fees to achieve greater pricing consistency across Reserve Bank product lines. Reserve Banks will also increase prices of selected products in 2005 to enhance service revenue. Most of the price increases are targeted at markets that are costly for the Reserve Banks to serve. Fees to present and return checks to depository institutions that are distant from Federal Reserve check processing offices will be increased to better align with the Reserve Banks' costs to deliver checks to these institutions. The fee changes will enhance the Reserve Banks' ability to recover costs, while maintaining the competitiveness of these products.

For 2005, the Reserve Banks are targeting an overall price increase of 7.9 percent, as shown in table 7. This increase consists of a 7.9 percent increase in forward check-collection fees, composed of a 7.6 percent increase in forward cash letter fees and a 7.9 percent increase in per-item fees. Fees for return services will increase by 8.1 percent, which is composed of a 4.8 percent increase in return cash letter fees and an 8.7 percent increase in per-item fees. The average volume-weighted fees for payor bank services will increase 2.8 percent compared with current fees.

TABLE 7.—2005 FEE CHANGES

[percent]

Product	Fee change
Total check service	7.9
Forward-collection	7.9
Cash letter	7.6
Item	7.9
Returns	8.1
Cash letter	4.8
Item	8.7
Payor bank services	2.8

3. *2005 Cost Recovery*—For 2005, projected cost recovery will be 100.0 percent of total costs, including imputed expenses, and targeted ROE.

TABLE 8.—CHECK 2004 ESTIMATE VS. 2005 BUDGET

[millions of dollars]

	2004 Estimate	2005 Budget	Variance
Service revenue	718.1	681.9	−36.2
NICB	37.9	49.7	11.8
Total revenue	756.0	731.6	−24.4
Local operating costs	472.0	349.9	−122.1
Other operating costs	225.3	295.6	70.3
RPO initiatives[a]	24.0	10.0	−14.0
Pension credits	−6.4	−6.3	0.1
Total expense	714.9	649.2	−65.7
Net Income	41.1	82.4	41.3
Target ROE	93.6	82.0	
Recovery rate (percent)	93.5	100.0	

[a] These are primarily check restructuring and Check 21-related expenses.

Total expenses are projected to decrease approximately $65.7 million, or 9.2 percent, from the 2004 estimate. The decrease owes largely to the decline in local operating costs, which are expected to decrease $122.1 million, or 25.9 percent. This decline reflects significant reductions in personnel costs, full-year savings associated with discontinuing the processing of checks at thirteen Federal Reserve offices as well as partial-year savings associated with discontinuing the processing of checks at six offices, and a shift of adjustment costs resulting from a transition to the national management of the adjustments function. Additional reductions include centralizing float management and check product development and pricing activities.

Total check revenue is projected to decline $24.4 million, or 3.2 percent, compared with the 2004 estimate. The revenue decline is driven by a $36.2 million, or 5.0 percent, reduction in service revenue, largely attributable to a continued downtrend in the Reserve Banks' check volumes due to the nationwide decline in check use. The price changes will somewhat attenuate the effect of volume losses on check revenue. Also partially offsetting the decline in service revenue is a projected $11.8 million increase in NICB.

In 2005, forward-processed check volume is projected to be 10.6 billion, a decrease of 15.8 percent compared with the 2004 estimate. The decline in the volume of checks is attributed to the continued decline in the use of paper checks in the United States, the increasing use of the ACH to collect payments that were previously processed as checks, price increases, and the reduction in the number of check processing sites. Fine-sort check volume is expected to decline 16.7 percent from the 2004 estimate. Total return volume is projected to decrease 10.1 percent compared with the 2004 estimate.

The Reserve Banks expect payor bank volumes to decrease. Electronic presentment volume is expected to decline 6.1 percent in 2005. Image volume is projected to decline 1.8 percent in 2005, compared with estimated 2004 volumes. The proportion of processed checks that the Reserve Banks provide to paying banks with electronic data or images is projected to rise in 2005 to about 47 percent.

The primary risks to the Reserve Banks' ability to achieve their budget targets are (1) greater-than-expected costs associated with the restructuring initiatives, (2) a steeper decline in the Reserve Banks' check volume than the projected 15.8 percent decrease, and (3) a greater-than-expected shift from higher margin products to lower margin products.

D. *Automated Clearinghouse (FedACH)*—Table 9 below shows the 2003, 2004 estimate, and 2005 budgeted cost recovery performance for the commercial FedACH service.

TABLE 9.—FEDACH PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2003	68.2	60.5	7.7	7.5	100.3%
2004 (Estimate)	74.9	65.2	9.7	8.9	101.0%
2005 (Budget)	82.1	71.8	10.3	10.0	100.4%

1. *2004 Estimate*—For 2004, the Reserve Banks estimate that the FedACH service will recover 101.0 percent of total expenses, including imputed expenses, and targeted ROE, compared with the budgeted recovery rate of 99.7 percent. Both ACH revenue and cost estimates were better than budgeted. Total revenue is estimated to be $0.1 million greater than budgeted, and total expenses are lower than budgeted by about $0.9 million. Through August 2004, origination volume was 3.1 percent higher than budgeted.

2. *2005 Pricing*—The Reserve Banks project that the FedACH service will recover 100.4 percent of costs in 2005, including imputed expenses, and targeted ROE. The Reserve Banks' fees for the FedACH service will remain unchanged. The Reserve Banks consider continued price stability important to remaining competitive in the ACH market.

Total revenue is budgeted to increase $7.2 million over the 2004 estimate, reflecting an increase in electronic access fees and service revenues. Total expenses, including imputed expenses, and targeted ROE are budgeted to increase $7.6 million over the 2004 estimate because of an increase in the cost of national support projects, specifically costs associated with the movement to the Internet-based distribution channel. In addition, the Reserve Banks have budgeted increased costs for product development and service initiatives, including FedACH International and FedACH risk-management services.

The Reserve Banks estimate that national ACH volume will grow 20 percent in 2005. This growth is largely attributable to new one-time ACH debit transactions, such as check conversion and Internet-initiated payments. The Reserve Banks, however, generally believe that FedACH origination volume will grow at a slower rate of 7.7 percent as a greater proportion of volume shifts to the private-sector ACH operator.

E. *Fedwire Funds and National Settlement Service*—Table 10 below shows the 2003, 2004 estimate, and 2005 budgeted cost recovery performance for the Fedwire funds and national settlement service.

TABLE 10.—FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2003	51.1	47.1	4.0	5.4	97.4%
2004 (Estimate)	57.5	51.8	5.7	6.8	98.1%
2005 (Budget)	64.2	56.3	7.9	7.9	100.0%

1. *2004 Estimate*—For 2004, the Reserve Banks estimate that the Fedwire funds and national settlement service will recover 98.1 percent of total expenses, including imputed expenses, and targeted ROE, compared with a 2004 budgeted recovery rate of 100.9 percent. The underrecovery is primarily attributed to lower-than-expected on-line funds transfer volume. Funds transfer volume through August 2004 has increased 0.2 percent relative to the same period in 2003. The Reserve Banks had originally projected a 6.8 percent growth in on-line funds volume for 2004, which was based on historical volume growth. Volume growth has been weaker than expected, and the Reserve Banks experienced a slight loss of market share in 2004 to a competitor. For the full year, the Reserve Banks estimate that volume will increase 2.0 percent compared with 2003. With respect to the national settlement service, the Reserve Banks estimate that the volume of settlement entries processed during 2004 will be slightly higher than the 2004 budget projection.

2. *2005 Pricing*—The Reserve Banks will increase on-line transfer fees for each Fedwire funds service price tier $0.01, effective July 1, 2005. The surcharge for off-line Fedwire funds transfers and fees for the national settlement service will remain unchanged.

The Reserve Banks project that the Fedwire funds and national settlement service will recover 100.0 percent of

total costs in 2005, including imputed expenses, and targeted ROE. Total costs for 2005, including imputed expenses, and targeted ROE are expected to increase $5.6 million from the 2004 estimate primarily because of rising national costs associated with a movement to an Internet-based distribution channel, as well as a higher PSAF. Funds transfer volume for 2005 is expected to increase 2.8 percent compared with the 2004 estimate. National settlement volume for 2005 is expected to remain flat compared with the 2004 estimate. The Reserve Banks project 2005 total revenue to increase by $6.7 million over the 2004 estimate primarily because of mid-year price increases, modest volume growth, increased NICB, and higher electronic access revenue.

F. *Fedwire Securities Service*—Table 11 below shows the 2003, 2004 estimate, and 2005 budgeted cost recovery performance for the Fedwire securities service.[8]

TABLE 11.—FEDWIRE SECURITIES SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2003	21.8	18.3	3.4	2.2	106.1%
2004 (Estimate)	20.7	17.3	3.4	2.9	102.4%
2005 (Budget)	21.4	18.1	3.3	2.9	102.3%

1. *2004 Estimate*—For 2004, the Reserve Banks estimate that the Fedwire securities service will recover 102.4 percent of total expenses, including imputed expenses, and targeted ROE, compared with a 2004 budgeted recovery rate of 104.0 percent. Through August 2004, the Fedwire securities service recovered 100.6 percent of total costs, including imputed expenses, and targeted ROE. The lower-than-budgeted recovery is primarily attributed to lower-than-expected revenue from transfer volume. Through August 2004, total Fedwire securities transfer volume has decreased 8.8 percent relative to the same period in 2003. For the full year, the Reserve Banks estimate that total Fedwire securities volume will decrease 8.8 percent from 2003, compared with a 2004 budget estimate of 6.8 percent volume growth. The lower-than-expected volume growth is primarily attributed to the slowdown in the growth of the mortgage financing market.

2. *2005 Pricing*—The Reserve Banks will raise the off-line transfer origination and receipt surcharge from $28 to $33 and raise the joint custody origination surcharge from $30 to $35. The Reserve Banks will retain all other fees at their current levels. The surcharge increases will more closely align the fee with the costs of these transactions.

The Reserve Banks project that the Fedwire securities service will recover 102.3 percent of costs in 2005, including imputed expenses, and targeted ROE. Total costs, including imputed expenses, and targeted ROE are expected to increase $0.8 million from the 2004 estimate. The Reserve Banks project that total securities volume in 2005 will increase 2.0 percent from the 2004 estimate. Total revenue is projected to increase $0.8 million from the 2004 estimate primarily due to projected modest volume increases, as well as higher NICB.

G. *Noncash Collection*—Table 12 below shows the 2003, 2004 estimate, and 2005 budgeted cost recovery performance for the noncash collection service.

TABLE 12.—NONCASH COLLECTION PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2003	2.3	1.7	.6	.2	123.1%
2004 (Estimate)	1.7	1.4	.3	.2	110.2%
2005 (Budget)	1.3	1.5	−.2	.2	76.0%

1. *2004 Estimate*—For 2004, the Reserve Banks estimate that the noncash collection service will recover 110.2 percent of costs, including imputed expenses, and targeted ROE, compared with the budgeted recovery rate of 112.0 percent. This lower-than-budgeted recovery is due to higher-than-expected volume declines. Through August 2004, noncash collection volume decreased 24.3 percent compared with volume during the same period in 2003, and the service recovered 126.4 percent of its costs. For the full year, the Reserve Banks estimate that 2004 volume will decrease 28.2 percent from 2003, compared with a 2004 budgeted decline of 18.9 percent.

2. *2005 Pricing*—The Board recently requested comment on a proposal to withdraw from the noncash collection service at year-end 2005(69 FR 60496, October 19, 2004). The Reserve Banks' fees for the noncash collection service will remain unchanged from 2004. New issues of bearer municipal securities effectively ceased in 1983 after the Tax

[8] The Reserve Banks provide transfer services for securities issued by the U.S. Treasury, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the U.S. Treasury assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the funds settlement component of a Treasury securities transfer; this component is not treated as a priced service.

Equity and Fiscal Responsibility Act of 1982 removed tax advantages for investors. As the number of outstanding physical municipal securities continues to decline, the volume of coupons and bonds presented for collection also will decline. The Reserve Banks project that volume will decrease 31.8 percent from the 2004 estimate. In 2005, the Reserve Banks project that the noncash collection service will recover 76.0 percent of total costs, including imputed expenses, targeted ROE, and costs associated with exiting the business.

H. *Electronic Access*—There are four types of electronic access options through which depository institutions can access the Reserve Banks' priced services: FedLine, FedMail, FedPhone, and computer interface (mainframe to mainframe).[9] The Reserve Banks allocate the costs and revenues associated with these electronic access options to the Reserve Banks' priced services.[10] For 2005, the Reserve Banks will change the FedLine connection fees only. Depository institutions currently use DOS-based terminals with either a dial connection or a frame relay connection to access the Reserve Banks' services. The Reserve Banks are in the process of migrating their customers to a tiered web-based access. This migration is scheduled to be completed by mid-year 2006. At that time, FedLine customers will only be able to access services via web-based applications.

In the interim, those customers that have not yet migrated to the web-based access can continue to use DOS-based terminals. For customers selecting a dial connection, the Reserve Banks bundle a FedLine DOS connection and web-based access into a single FedLine Select package, which includes one DOS-based FedLine dial connection and FedLine Web institution-level access with three digital certificates for individual subscribers. In this arrangement, customers will use their DOS-based connection to access transaction services and FedLine Web to access information services. The Reserve Banks will increase the FedLine Select fee from $150 to $200. For customers selecting a frame relay connection, the Reserve Banks will raise the connection fee from $500 to $825.

Those customers using the tiered web-based access can choose either FedLine Web to access information services or FedLine Advantage to access both transaction services and information services. The Reserve Banks will increase the standalone FedLine Web fee from $25 to $50 per month. FedLine Advantage offers customers access to value-transaction applications.[11] A FedLine Advantage subscription will include the FedLine Advantage institution fee and three FedLine Advantage digital certificates for individual subscribers. The Reserve Banks will introduce FedLine Advantage at a monthly fee of $250. FedLine Select and FedLine Advantage support the Reserve Banks' strategic direction of moving to web-based electronic access, consistent with and in response to customers' preferences.

II. Private-Sector Adjustment Factor

A. *Background*—Each year, as required by the Monetary Control Act of 1980, the Reserve Banks set fees for priced services provided to depository institutions. These fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses, as well as return on equity (profit) that would have been earned if a private business firm provided the services. These imputed costs are based on data developed in part from a model comprising consolidated financial data for the nation's fifty largest bank holding companies (BHCs).[12] The imputed costs and imputed profit are collectively referred to as the PSAF. In a comparable fashion, investment income is imputed and netted with related direct costs associated with clearing balances to estimate net income on clearing balances (NICB).

The method for calculating the financing and equity costs in the PSAF requires determining the appropriate levels of debt and equity to impute and then applying the applicable financing rates. This process requires developing a pro forma priced services balance sheet using estimated Reserve Bank assets and liabilities associated with priced services and imputing the remaining elements that would exist if the Reserve Banks' priced services were provided by a private business firm.

The amount of the Reserve Banks' assets that will be used to provide priced services during the coming year is determined using Reserve Bank information on actual assets and projected disposals and acquisitions. The priced portion of mixed-use assets is determined based on the allocation of the related depreciation expense. The priced portion of actual Reserve Bank liabilities consists of balances held by Reserve Banks for clearing priced services transactions (clearing balances), projected based on historical data, and other liabilities such as accounts payable and accrued expenses.

Long-term debt is imputed only when core clearing balances and long-term liabilities are not sufficient to fund long-term assets or if the interest rate risk sensitivity analysis, which measures the interest rate effect of the difference between interest rate sensitive assets and liabilities, indicates that a 200 basis point change in interest rates would change cost recovery more than two percentage points.[13, 14] Short-term debt is imputed only when short-term liabilities and clearing balances not used to finance long-term assets are insufficient to fund short-term assets. Equity is imputed to meet the FDIC definition of a well-capitalized institution, which is currently 5 percent of total assets and 10 percent of risk-weighted assets.

1. *Financing rates*—Equity financing rates are based on the average of the return on equity (ROE) results of three economic models using data from the BHC peer group.[15, 16] For simplicity, given that federal corporate tax rates are graduated, state tax rates vary, and various credits and deductions can apply, a specific tax rate is not calculated for Reserve Bank priced services. Instead, imputed taxes are captured using a pre-tax ROE. The resulting ROE influences the dollar level of the PSAF and Federal Reserve price levels because this is the return a shareholder would expect in order to invest in a private business firm. The

[9] These connections may also be used to access non-priced services provided by the Reserve Banks. No fee is assessed if a particular connection is used only to access non-priced services.

[10] The remaining costs are allocated to non-priced services that use electronic access options.

[11] FedLine Advantage offers customers access to the Reserve Banks' value-transaction applications: FedACH, the Fedwire funds and the national settlement service, and the Fedwire securities service.

[12] The peer group of the fifty largest bank holding companies is selected based on total deposits.

[13] A portion of clearing balances is used as a funding source for priced services assets. Long-term assets are partially funded from core clearing balances, currently $4 billion. Core clearing balances are considered the portion of the balances that has remained stable over time without regard to the magnitude of actual clearing balances.

[14] The PSAF methodology includes an analysis of interest rate risk sensitivity, which compares rate-sensitive assets with rate-sensitive liabilities and measures the change in cost recovery of a change in interest rates of up to 200 basis points.

[15] The pre-tax ROE is determined using the results of the comparable accounting earnings model (CAE), the discounted cash-flow model (DCF), and the capital asset pricing model (CAPM). Within the CAPM and DCF models, the ROE is weighted based on market capitalization, and within the CAE model, the ROE calculation is equally weighted. The results of the three models are averaged to impute the PSAF pre-tax ROE.

[16] When needed to impute short- and long-term debt, the debt rates are derived based on the short-term debt and long-term debt elements in the BHC peer group.

use of the pre-tax return on equity assumes 100 percent recovery of expenses, including imputed costs and the targeted return on equity. The PSAF is, therefore, based on a matching of revenues with actual and imputed costs. If the pre-tax earnings are less than the targeted ROE, imputed expenses are adjusted for the tax savings associated with the adjusted recovery. The imputed tax rate is the median of the rates paid by the BHCs over the past five years adjusted to the extent that BHCs have invested in tax-free municipal bonds.

2. *Other Costs*—The PSAF also includes the estimated priced services-related expenses of the Board of Governors and imputed sales taxes based on Reserve Bank estimated expenditures. An assessment for FDIC insurance, when required, is imputed based on current FDIC rates and projected clearing balances held with the Federal Reserve.

B. *Net Income on Clearing Balances*—The NICB calculation is made each year along with the PSAF calculation and is based on the assumption that Reserve Banks invest clearing balances net of imputed reserve requirements and balances used to finance priced-services assets. Based on these net clearing balance levels, Reserve Banks impute a constant spread, determined by the return on a portfolio of investments, over the three-month Treasury bill rate.[17, 18] The calculation also involves determining the priced services cost of earnings credits (amounts available to offset future service fees) on contracted clearing balances held, net of expired earnings credits, based on a discounted Treasury bill rate. Beginning in 2005, rates and clearing balance levels used in the NICB estimate are based on the most recent rates and clearing balance levels. Recent clearing balance levels are adjusted using historical data on depository institution clearing balance management in a changing interest rate environment and applying the constant spread to the most recent three-month Treasury bill rate prior to the calculation date.[19] Because clearing balances are held for clearing priced services transactions or offsetting priced services fees, they are directly related to priced services. The net earnings or expense attributed to the imputed Treasury-bill investments and the cost associated with holding clearing balances, therefore, are considered net income for priced services activities.

C. *Discussion*—The decrease in the 2005 PSAF is primarily due to a decrease in clearing balances on which investments are imputed and the resulting decrease in total assets. Since required imputed equity is based on five percent of total assets, priced services equity and the cost of equity also decreased proportionally.

1. *Asset Base*—The estimated Federal Reserve assets in 2005 to provide priced services, reflected in table 13, have decreased $1,056.0 million, or 6.1 percent. The decline in total assets is primarily a result of a decrease in imputed investments in marketable securities of $1,064.3 million and a decrease in imputed reserve requirements of $119 million. These elements are imputed based on the estimated level of clearing balances. As a result of consolidation and restructuring of several System functions, Bank premises assets are projected to decrease $38.8 million and leasehold improvements and long-term prepayments are projected to decrease $15.7 million. Offsetting these decreases in assets is an increase in items in process of collection of $201.1 million based on higher estimated float receivables.

As shown in table 14, the assets financed through the PSAF have decreased. Short-term assets funded with short-term payables and clearing balances total $38.9 million. This amount represents a decrease of $1.4 million, or 3.5 percent, from the short-term assets funded in 2004. Long-term assets funded with long-term liabilities, equity, and core clearing balances are projected to total $361.7 million. This amount represents a decrease of $5.2 million or 1.4 percent from the long-term assets funded in 2004.

2. *Debt and Equity Costs and Taxes*—As previously mentioned, core clearing balances are available as a funding source for priced service assets. Table 14 shows that $400.6 million in clearing balances is used to fund priced services assets in 2005. The interest rate sensitivity analysis in table 15 indicates that a 200 basis point decrease in interest rates affects the ratio of rate-sensitive assets to rate-sensitive liabilities and produces a decrease in cost recovery of 0.8 percentage points, while an increase of 200 basis points in interest rates increases cost recovery by 0.7 percentage points. The established threshold for a change in cost recovery is two percentage points; therefore, interest rate risk associated with using these balances is within acceptable levels and no long-term debt is imputed.

Table 16 shows the imputed PSAF elements, the pre-tax ROE, and other required PSAF recoveries for 2004 and 2005. The decrease in clearing balances from which investments are imputed decreases total assets. The decrease in total assets, and the resulting decrease in imputed equity, decreases the estimated cost of equity in 2005. As indicated previously, the pre-tax return on equity is calculated using the combined results of three models. Contributing to the decrease in the overall imputed cost of equity is a decrease in the DCF component of the ROE calculation, resulting in the pre-tax ROE decreasing from 18.6 percent in 2004 to 18.1 percent in 2005. Sales taxes decreased from $12.0 million in 2004 to $8.2 million in 2005. The effective income tax rate used in 2005 also decreased to 29.6 percent from 29.8 percent in 2004. The priced service portion of the Board's expenses decreased $1 million from $7.6 million in 2004 to $6.6 million in 2005.

3. *Capital Adequacy and FDIC Assessment*—As shown in table 13, the amount of equity imputed for the 2005 PSAF is $808.0 million, a decrease of $52.8 million from imputed equity of $860.8 million in 2004. As noted above, equity is based on 5 percent of total assets, as required by the FDIC for a well-capitalized institution, as defined for purposes of assessing insurance premiums. In both 2005 and 2004, the capital to risk-weighted asset ratio and the capital to total assets ratio both exceed regulatory guidelines. As a result, no FDIC assessment is imputed for either year.

III. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy statement, ''The Federal Reserve in the Payments System.'' [20] Under this policy, the Board assesses whether the change would have

[17] The investment portfolio is composed of investments comparable to a BHC's investment holdings. In 2005, these investments were limited to federal funds, Treasury securities, government agency securities, commercial paper, municipal bonds, and money market and mutual funds.

[18] The 2004 constant spread was revised from 35 basis points to 30 basis points after correcting an error in the NICB portfolio model. The revised constant spread decreased the projected 2004 final NICB from $52.7 million to $47.6 million. Using the average spread of 29 basis points over the three-month Treasury bill, applied to the clearing balance levels and rate assumptions used in the 2005 pricing process, NICB is projected to be $61.3 million for 2005.

[19] Previously, the projected balances were based on the average of the most recent six months of data prior to NICB calculation date and the projected T-bill rate was the rolling 13-week average of the three-month T-bill rate.

[20] Federal Reserve Regulatory Service (FRRS) 9–1558.

a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position deriving from such legal differences. If the change creates such an effect, the Board must further evaluate the change to assess whether its benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while minimizing the adverse effect on competition.

The Board believes that the 2005 fees and changes to the earnings credits on clearing balances will not have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. The changes will permit the Federal Reserve Banks to earn an ROE similar to that earned by the fifty largest BHCs.

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Table 13
Comparison of Pro Forma Balance Sheets
for Federal Reserve Priced Services
(millions of dollars – average for year)

	2005	2004	Change
Short-term assets			
Imputed reserve requirement on clearing balances	$ 1,056.6	$ 1,175.6	$ (119.0)
Receivables	64.9	74.0	(9.1)
Materials and supplies	1.7	2.6	(.9)
Prepaid expenses	28.5	25.4	3.1
Items in process of collection[21]	4,445.8	4,244.7	201.1
Total short-term assets	5,597.5	5,522.3	75.2
Imputed investments	$ 9,108.6	$ 10,172.9	$ (1,064.3)
Long-term assets			
Premises [22]	394.9	433.7	(38.8)
Furniture and equipment	173.1	173.3	(.2)
Leasehold improvements and long-term prepayments	79.7	95.4	(15.7)
Prepaid pension costs	806.0	818.2	(12.2)
Total long-term assets	1,453.7	1,520.6	(66.9)
Total assets	$ 16,159.8	$ 17,215.8	$ (1,056.0)
Short-term liabilities[23]			
Clearing balances and balances arising From early credit of uncollected items	$ 10,620.6	$ 11,887.1	$ (1,266.5)
Deferred credit items[21]	4,391.0	4,113.3	277.5
Short-term payables	56.2	61.7	(5.5)
Total short-term liabilities	15,067.8	16,062.1	(994.3)
Long-term liabilities[23]			
Postemployment/retirement benefits	284.0	292.9	(8.9)
Total liabilities	15,351.8	16,355.0	(1,003.2)
Equity	808.0	860.8	(52.8)
Total liabilities and equity	$ 16,159.8	$ 17,215.8	$ (1,056.0)

[21] Represents float that is directly estimated at the service level.
[22] Includes allocations of Board of Governors' assets to priced services of $1.4 million for 2005 and $1.7 million for 2004.
[23] No debt is imputed because clearing balances are used as an available funding source.

Table 14
Portion of Clearing Balances used
to Fund Priced Services Assets
(millions of dollars)

	2005		2004	
A. Short-term asset financing				
Short-term assets to be financed:				
Receivables	$ 64.9		$ 74.0	
Materials and supplies	1.7		2.6	
Prepaid expenses	28.5		25.4	
Total short-term assets to be financed	$ 95.1		$ 102.0	
Short-term funding sources:				
Short-term payables	56.2		61.7	
Portion of short-term assets funded with clearing balances[24]		$ 38.9		$ 40.3
B. Long-term asset financing				
Long-term assets to be financed:				
Premises	$ 394.9		$ 433.7	
Furniture and equipment	173.1		173.3	
Leasehold improvements and long-term prepayments	79.7		95.4	
Prepaid pension costs	806.0		818.2	
Total long-term assets to be financed	$ 1,453.7		$ 1,520.6	
Long-term funding sources:				
Postemployment/retirement benefits	284.0		292.9	
Imputed equity[25]	808.0		860.8	
Total long-term funding sources	$ 1,092.0		$ 1,153.7	
Portion of long-term assets funded with core clearing balances[24]		$ 361.7		$ 366.9
C. Total clearing balances used for funding priced-services assets		$ 400.6		$ 407.2

[24] Clearing balances shown on table 13 are available for financing priced-services assets. Using these balances reduces the amount available for investment in Treasury bills for the net income on clearing balances calculation. Long-term assets are financed with long-term liabilities and with core clearing balances; a total of $4 billion in balances is available for this purpose. Short-term assets are financed with clearing balances not used to finance long-term assets. No short- or long-term debt is imputed.

[25] See table 16 for calculation of required imputed equity amount.

Table 15
2005 Interest Rate Sensitivity Analysis[26]
(millions of dollars)

	Rate sensitive	Rate insensitive	Total
Assets			
Imputed reserve requirement on clearing balances		$ 1,056.6	$ 1,056.6
Imputed investments	$ 9,108.6		9,108.6
Receivables		64.9	64.9
Materials and supplies		1.7	1.7
Prepaid expenses		28.5	28.5
Items in process of collection[27]	54.8	4,391.0	4,445.8
Long-term assets		1,453.7	1,453.7
Total assets	$ 9,163.4	$ 6,996.4	$ 16,159.8
Liabilities			
Clearing balances and balances arising from early credit of uncollected items[28]	$ 8,685.1	$ 1,935.5	$ 10,620.6
Deferred credit items		4,391.0	4,391.0
Short-term payables		56.2	56.2
Long-term liabilities		284.0	284.0
Total liabilities	$ 8,685.1	$ 6,666.7	$ 15,351.8

Rate change results	200 basis point decrease in rates	200 basis point increase in rates
Asset yield ($9,163.4 x rate change)	$ (183.3)	$ 183.3
Liability cost ($8,685.1 x rate change)	(173.7)	173.7
Effect of 200 basis point change	$ (9.6)	$ 9.6
2005 budgeted revenue	$ 900.6	$ 900.6
Effect of change	(9.6)	9.6
Revenue adjusted for effect of interest rate change	$ 891.0	$ 910.2
2005 budgeted total expenses	$ 796.9	$ 796.9
2005 budgeted target ROE	102.9	102.9
Tax effect of interest rate change ($ change x 29.6%)	(2.8)	2.8
Total recovery amounts	$ 897.0	$ 902.6
Recovery rate before interest rate change	100.1 %	100.1%
Recovery rate after interest rate change	99.3 %	100.8%
Effect of interest rate change on cost recovery[29]	(0.8)%	0.7%

[26] The interest rate sensitivity analysis evaluates the level of interest rate risk presented by the difference between rate-sensitive assets and liabilities. The analysis reviews the ratio of rate-sensitive assets to rate-sensitive liabilities and the effect on cost recovery of a change in interest rates of up to 200 basis points.

[27] The amount designated rate sensitive represents the amount of cash items in process of collection that have been credited to customers prior to settlement.

[28] The amount designated rate insensitive represents clearing balances on which earnings credits are not paid.

[29] The effect of a potential change in rates is less than a 2 percentage point change in cost recovery; therefore, no long-term debt is imputed for 2005.

Table 16
Derivation of the 2005 and 2004 PSAF
(millions of dollars)

	2005		2004	
A. Imputed elements				
Short-term debt[30]		$ 0.0		$ 0.0
Long-term debt[31]		$ 0.0		$ 0.0
Equity				
Total assets from table 13	$ 16,159.8		$ 17,215.8	
Required capital ratio[32]	5%		5%	
Total equity		$ 808.0		$ 860.8
B. Cost of capital				
1. Financing rates/costs				
Short-term debt		N/A		N/A
Long-term debt		N/A		N/A
Pre-tax return on equity				
CAE[33]	22.2%		22.3%	
CAPM	12.3%		12.2%	
DCF	19.7%		21.3%	
Average pre-tax return on equity		18.1%		18.6%
2. Elements of capital costs				
Short-term debt		$ 0.0		$ 0.0
Long-term debt		0.0		0.0
Equity	$ 808.0 x 18.1% =	146.2	$ 860.8 x 18.6% =	160.1
		$ 146.2		$ 160.1
C. Other required PSAF recoveries				
Sales taxes	$ 8.2		$ 12.0	
Federal Deposit Insurance assessment	0.0		0.0	
Board of Governors expenses	6.6		7.6	
		14.8		19.6
D. Total PSAF		$ 161.0		$ 179.7
As a percent of assets		1.0%		1.0%
As a percent of expenses[34]		22.2%		23.1%
E. Tax rates		29.6%		29.8%

[30] No short-term debt is imputed because clearing balances are used as a funding source for those assets that are not financed with short-term payables.
[31] No long-term debt is imputed because clearing balances are used as a funding source.
[32] Based on the Federal Deposit Insurance Corporation's definition of a well-capitalized institution for purposes of assessing insurance premiums.
[33] Based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the PSAF.
[34] System 2005 budgeted priced services expenses less shipping are $724.8 million.

Table 17
Computation of 2005 Capital Adequacy
for Federal Reserve Priced Services
(millions of dollars)

	Assets	Risk weight	Weighted assets
Imputed reserve requirement on clearing balances	$ 1,056.6	0.0	$ 0.0
Imputed investments:			
1 – year Treasury note[35]	3,727.1	0.0	0.0
Commercial paper (3 months)[35]	5,044.7	1.0	5,044.7
GNMA mutual fund[36]	336.8	0.2	67.4
	$ 9,108.6		$ 5,112.1
Receivables	64.9	0.2	13.0
Materials and supplies	1.7	1.0	1.7
Prepaid expenses	28.5	1.0	28.5
Items in process of collection	4,445.8	0.2	889.2
Premises	394.9	1.0	394.9
Furniture and equipment	173.1	1.0	173.1
Leases, leasehold improvements & long-term prepayments	79.7	1.0	79.7
Prepaid pension costs	806.0	1.0	806.0
Total	$ 16,159.8		$ 7,498.2

Imputed equity for 2005	$ 808.0
Capital to risk-weighted assets	10.8 %
Capital to total assets	5.0 %

[35] The imputed investments are assumed to be similar to those for which rates are available on the Federal Reserve's H.15 report, which can be located at http://www.federalreserve.gov/releases/h15/data.htm

[36] The imputed mutual fund investment is based on Vanguard's GNMA Fund Investor Shares fund, which was chosen based on the investment strategies articulated in its prospectuses. The fund returns can be located at http://flagship4.vanguard.com/VGApp/hnw/FundsByType.

FEDERAL RESERVE
AUTOMATED CLEARINGHOUSE FEDACH FEE SCHEDULE

EFFECTIVE JANUARY 3, 2005. THERE ARE NO CHANGES FROM 2004 PRICES.

	Fee
Origination (per item or record):[37]	
Items in small files	$0.0030
Items in large files	$0.0025
Addenda record	$0.0010
Input file processing fee (per file):	$3.75
Receipt (per item or record):[38]	
Item	$0.0025
Addenda record	$0.0010
Monthly fee (per routing number):	
Account servicing fee[39]	$25.00
FedACH settlement[40]	$20.00
Information extract file	$10.00
FedLine Web return item/notification of change (NOC) fee:[41]	$0.50
Voice response return item/NOC fee:[42]	$2.00
Nonelectronic input/output fee:[43]	
Tape input/output	$25.00
Paper output	$15.00
Facsimile return/NOC[44]	$15.00
Canadian cross-border fee:	
Cross-border item surcharge[45]	$0.039
Same-day recall of item at receiving gateway operator	$3.50
Same-day recall of item not at receiving gateway operator	$5.00
Item trace	$5.00
Microfiche	$3.00

[37] Small files contain fewer than 2,500 items and large files contain 2,500 or more items. These origination fees do not apply to items that the Reserve Banks receive from other operators.

[38] Receipt fees do not apply to items that the Reserve Banks send to the other ACH operator.

[39] The account-servicing fee applies only to routing numbers that have received or originated transactions that are processed by the Reserve Banks. Institutions that receive only U.S. government transactions or that elect to use the other operator exclusively are not assessed the account-servicing fee.

[40] The FedACH settlement fee is applied to any routing number with activity during a month. This fee does not apply to routing numbers that use the Reserve Banks for government transactions only.

[41] The fee includes the transaction and addenda fees.

[42] The fee includes the transaction fee in addition to the voice-response fee.

[43] These services are offered for contingency situations only.

[44] The fee includes the transaction fee in addition to the conversion fee.

[45] The cross-border item surcharge is assessed in addition to the standard item, addenda, and file-processing fees.

Mexico service fee:	
Cross-border item surcharge[46]	$0.67
Return received from Mexico	$0.69
Item trace	$11.50
Transatlantic service fee:	
Cross-border item surcharge[47]	
Austria	$2.00
Germany	$2.00
The Netherlands	$2.00
Switzerland	$2.00
United Kingdom	$2.00
Return received from[48]	
Austria	$5.00
Germany	$8.00
The Netherlands	$5.00
Switzerland	$5.00
United Kingdom	$8.00

[46] The cross-border item surcharge is assessed in addition to the standard item, addenda, and file-processing fees.

[47] The cross-border item surcharge is assessed in addition to the standard item, addenda, and file-processing fees.

[48] This per-item surcharge is in addition to the standard receipt fees.

FEDERAL RESERVE
FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICE FEE SCHEDULE

EFFECTIVE JULY 1, 2005. BOLD INDICATES CHANGES FROM 2004 PRICES.

Fedwire Funds Service

	Fee
Basic volume-based transfer fee (originations and receipts)	
Per transfer for the first 2,500 transfers per month	**$0.31**
Per transfer for additional transfers up to 80,000 per month	**$0.21**
Per transfer for every transfer over 80,000 per month	**$0.11**
Surcharge	
Off-line transfers (originations and receipts)	$15.00

National Settlement Service

Basic	
Settlement entry fee	$0.80
Settlement file fee	$14.00
Surcharge	
Off-line surcharge	$25.00
Minimum monthly charge (account maintenance)[49]	$60.00
Special settlement arrangements[50]	
Fee per day	$100.00

[49] This minimum monthly charge will only be assessed if total settlement charges during a calendar month are less than $60.

[50] Special settlement arrangements use Fedwire funds transfers to effect settlement. Participants in arrangements and settlement agents are also charged the applicable Fedwire funds transfer fee for each transfer into and out of the settlement account.

FEDERAL RESERVE
FEDWIRE SECURITIES SERVICE FEE SCHEDULE
(NON-TREASURY SECURITIES)

EFFECTIVE JANUARY 3, 2005. BOLD INDICATES CHANGES FROM 2004 PRICES.

	Fee
Basic transfer fee	
Transfer or reversal originated or received	$0.32
Surcharge	
Off-line transfer or reversal originated or received	**$33.00**
Monthly maintenance fees	
Account maintenance (per account)	$15.00
Issues maintained (per issue/per account)	$0.40
Claim adjustment fee	$0.30
Joint custody fee	**$35.00**

FEDERAL RESERVE
NONCASH COLLECTION FEE SCHEDULE

EFFECTIVE JANUARY 3, 2005. THERE ARE NO CHANGES FROM 2004 PRICES.

Coupon collection:	Fee
Cash letters fee	$13.00
Coupon envelopes	$4.50
Return items	$35.00
Bond collection (per bond):[51]	$55.00

[51] Plus actual shipping costs.

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FEDERAL RESERVE ELECTRONIC ACCESS FEE SCHEDULE

[Effective January 3, 2005. Bold indicates changes from 2004 prices]

FedLine	
FedLine® Select Package (monthly)	**$200.00**
Includes:	
One dial—DOS-based FedLine	
One FedLine Web institution fee	
Three individual subscriptions	
Additional FedLine Web individual subscriber fee (monthly)	**15.00**
Additional DOS-based FedLine—Dial (monthly)	**100.00**
Additional DOS-based FedLine—Frame Relay less than 56 kbps (monthly)	**825.00**
Test and Contingency Options for Frame Relay:	
Full Circuit Backup [52]—less than 56 kbps (monthly)	**825.00**
Frame Connection Only [53]—less than 56 kbps (monthly)	**693.00**
Redundant Component Set [54]—less than 56 kbps (monthly)	155.00
FedLine® Web (monthly)	**50.00**
Set-up fee (one time)	50.00
Individual subscriber fee (monthly)	**15.00**
FedLine® Advantage (monthly)	**250.00**
Includes:	
One FedLine Advantage institution fee	
Three FedLine Advantage individual subscriber digital certificates	
Set-up fee (one time)	**400.00**
VPN (monthly)	**50.00**
Individual subscriber fee beyond first three (one time)	**100.00**
Individual subscriber fee (monthly)	**20.00**
FedPhone & FedMail	
FedMail® Fax (monthly per fax line) [55]	15.00
Computer Interface [56]	
Frame Relay-Computer Interface (CI) @ 56 kbps (monthly)	1,000.00
Frame Relay-CI @ 256 kbps (monthly)	2,000.00
Frame Relay-CI T1 (monthly)	2,500.00

TEST AND CONTINGENCY OPTIONS FOR FRAME RELAY

Connection type	Full circuit backup [52]	Frame connection only [53]
CI @ 56 kbps ...	$845	$765
CI @ 256 kbps	1,750	1,585
CI T1	2,230	2,010

By order of the Board of Governors of the Federal Reserve System, November 4, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–24967 Filed 11–8–04; 8:45 am]

BILLING CODE 6210–01–P

[52] This option applies to test systems or contingency systems that are located at separate facilities, including another bank office or a third-party contingency site. Prices shown are for full-circuit backup only located at the customer site. Multiple customers sharing a single disaster-recovery connection at a third-party provider require custom implementations.

[53] This option applies to test systems or contingency systems that are located at separate facilities. The institution uses a frame relay link connection with no ISDN dial-up backup. Prices shown are for frame connection only located at the customer site. Multiple customers sharing a single disaster recovery connection at a third-party provider require custom implementations.

[54] Includes a Cisco router, a digital service unit, and a link encryptor.

[55] FedPhone and FedMail e-mail are free options.

[56] Some large computer interface customers may be required to ensure that their contingency connections to the Federal Reserve are diversely routed, and they will be expected to defray the costs incurred by the Federal Reserve of providing this network diversity. Depending on the cost of providing specific circuits, one of five tiered price points would apply: $250/$500/$1,000/$2,000/$2,500 per month. Additionally, a group of the Reserve Banks' largest frame relay customers will incur a $1,000 per circuit supplemental fee to recover the additional costs associated with this effort. The Reserve Banks began charging this select group on September 30, 2004.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (e.s.t.), November 15, 2004.

PLACE: SI International, 12012 Sunset Hills Road, Suite 800, Reston, VA 20190.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the October 18, 2004, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

Parts Closed to the Public

3. Procurement.
4. Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 5, 2004.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 04–25139 Filed 11–5–04; 3:54 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on December 2–3, 2004

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Leon R. Kass, M.D., chairman) will hold its nineteenth meeting, at which, among other things, it will continue its discussion of ethical issues relating to the treatment of the aged, and end-of-life care. Subjects discussed at past Council meetings (though not on the agenda for the present one) include: cloning, stem cell research, embryo research, assisted reproduction, reproductive genetics, IVF, ICSI, PGD, sex selection, inheritable genetic modification, patentability of human organisms, aging retardation, lifespan-extension, and organ procurement for transplantation. Publications issued by the Council to

date include: *Human Cloning and Human Dignity: An Ethical Inquiry* (July 2002); *Beyond Therapy: Biotechnology and the Pursuit of Happiness* (October 2003); *Being Human: Readings from the President's Council on Bioethics* (December 2003); *Monitoring Stem Cell Research* (January 2004), and *Reproduction and Responsibility: The Regulation of New Biotechnologies* (March 2004).

DATES: The meeting will take place Thursday, December 2, 2004, from 9 a.m. to 4:30 p.m. ET; and Friday, December 3, 2004, from 8:30 a.m. to 12:30 p.m. ET.

ADDRESSES: The Stephen Decatur House, 1610 H Street, NW., Washington, DC 20002. Phone 202–842–0920.

Agenda: The meeting agenda will be posted at *http://www.bioethics.gov.*

Public Comments: The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:30 a.m., on Friday, December 3. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, Washington, DC 20006. Telephone: 202/296–4669. E-mail: *info@bioethics.gov.* Web site: *http://www.bioethics.gov.*

Dated: November 3, 2004.

Yuval Levin,

Acting Executive Director, The President's Council on Bioethics.

[FR Doc. 04–24945 Filed 11–8–04; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–04–0012]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Nosocomial Infections Surveillance (NNIS) System—Reinstatement with change—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention (CDC).

The NNIS system, which was instituted in 1970, is an ongoing surveillance system currently involving 345 hospitals that voluntarily report nosocomial infections data to CDC, who aggregate the data into a national database. The data are collected using surveillance protocols developed by CDC for high risk patient groups (ICU, high-risk nursery, and surgical patients). Instructional manuals, training of surveillance personnel and computer surveillance software are among the support that CDC provides without cost to participating hospitals to ensure the reporting of accurate and uniform data.

In the very near future this data collection will be merged with two other collections to form the National Healthcare Safety Network (NHSN). This network will be a computer-based system. Since this system will be phased in over time, CDC will need to continue using the forms within this clearance request until the transformation has been completed.

The purpose of the NNIS system is to provide national data on the incidence of nosocomial infections and their risk factors, and on emerging antibiotic resistance. The data are used to determine: (1) The magnitude of various nosocomial infection problems; (2) trends in infection rates among patients with similar risks; and (3) changes in the epidemiology of nosocomial infections resulting from new medical therapies and changing patient risks.

New to the NNIS system is the monitoring of antibiotic resistance and antimicrobial use in groups of patients. Data from the monitoring of antibiotic resistance and antimicrobial use in the NNIS system will be used to describe the epidemiology of antibiotic resistance and understand the role of antimicrobial therapy to the growing problem of antibiotic resistance. The NNIS system can also serve as a sentinel system for the detection of nosocomial infection outbreaks in the event of national distribution of a contaminated medical product or device.

The respondent burden is not the same in each hospital since the hospitals can select from a wide variety of surveillance options. A typical hospital will monitor patients for infections in two ICUs and surgical site infections following three surgical operations. The respondent burden includes the time and cost to: (1) Collect data on nosocomial infections in patients in these groups and the denominator data to characterize risk factors in the patients who are being monitored; (2) to enter the data as well as a surveillance plan into the surveillance software; (3) send the data to CDC by electronic transmission; and (4) complete a short annual survey and administrative forms. The total annualized burden is 66,775 hours.

Form title	Number of respondents	Number of responses/ respondent	Average burden per response (in hrs.)
Hospital Personnel List	297	1	15/60
Annual Participating Institution Survey	297	1	45/60
NNIS Infection Worksheet:			
Hospitals with High Risk Nursery	100	240 (20×12)	25/60
Hospitals without High Risk Nursery	197	180 (15×12)	25/60
Adult & Pediatric ICU Monthly Report	235	12	6
High Risk Nursery Surveillance Monthly Report	100	12	4
Surgical Patient Surveillance-Operative Procedure Daily Report	205	12	2
Monthly Surveillance Plan	277	12	25/60
Supplementary Data Collection, Cesarean Patient Report	29	240	27/60

Form title	Number of respondents	Number of responses/ respondent	Average burden per response (in hrs.)
Supplementary Data Collection, Craniotomy Patient Report	9	58	27/60
Supplementary Data Collection, Spinal Fusion Patient Report	18	60	27/60
Supplementary Data Collection, Ventricular Shunt Patient	10	180	27/60
AUR Surveillance Monthly Report:			
ICP	30	12 (1×12)	2
Laboratory Technician	30	60 (5×12)	3
Pharmacy Technician	30	48 (4×12)	2
AUR Surveillance Contact Information	40	1	10/60
Antimicrobial Prescribing Practices	30	1	15/60

Dated: November 3, 2004.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24892 Filed 11–8–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–05AD]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–498–1210 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Helping to End Lead Poisoning (HELP): A Questionnaire Study of Medicaid Providers' Beliefs, Barriers, Knowledge, and Cues to Action for Childhood Blood Lead Testing—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

According to the United States Department of Health and Human Services (DHHS), lead poisoning is one of the most serious environmental threats to children in the United States. Very high blood lead levels in children can cause encephalopathy, coma, and even death. At lower levels, lead poisoning is a silent attacker because most children who are lead poisoned do not show symptoms. Low levels of lead poisoning are often associated with reductions in IQ and attention span, and with learning disabilities, hyperactivity, and behavioral problems. Because of these subtle effects, the best way to determine if a child has lead poisoning is by giving the child a blood lead test. Children eligible for Medicaid are typically at highest risk for lead exposure. DHHS policies require blood lead testing for all children participating in federal health care programs. However, most children in or targeted by federal health care programs have not been tested. This study will help to provide some of the reasons why most children are not being tested.

Although blood lead testing is important, it is ineffective unless it is performed when the child is young enough to receive the full benefits of effective environmental interventions. Thus, it was determined by CDC that more information is needed to understand the barriers Medicaid providers face when it comes to blood lead testing.

HELP is a comparison study between two communities in Wisconsin. To determine why some areas in Wisconsin have high blood lead testing rates and others do not, Medicaid providers in two areas will be studied. Community 1 has high and Community 2 has low blood lead testing rates. Questionnaires will be mailed to all Medicaid providers in these two Wisconsin communities. The questionnaires will be mailed from the Wisconsin Childhood Lead Poisoning Prevention Program in Milwaukee, Wisconsin. CDC will analyze the data from the questionnaires. CDC and the Wisconsin Childhood Lead Poisoning Prevention Program staff will use this information to understand the barriers Medicaid providers face concerning blood lead testing and to develop effective strategies that promote blood lead testing among Medicaid providers. There are no costs to respondents except their time to participate.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Targeted Medicaid Providers in Wisconsin	500	1	10/60	83
Total				83

Dated: November 3, 2004.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24893 Filed 11–8–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0480]

The Minor Use and Minor Species Animal Health Act; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a new Office of Minor Use and Minor Species (MUMS) Animal Drug Development and is requesting comments on the implementation of the newly enacted MUMS Animal Health Act. This notice is intended to provide the public with contact information for the new MUMS office as well as to provide a venue for public comment.

DATES: Submit written or electronic comments by January 10, 2005.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Andrew Beaulieu, Office of Minor Use and Minor Species Animal Drug Development, Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855, 301–827–2945, *abeaulie@cvm.fda.gov*. Alternatively, you may contact Margaret Oeller, Office of Minor Use and Minor Species Animal Drug Development, Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855, 301–827–3067, *moeller@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The MUMS Animal Health Act became law on August 2, 2004 (Public Law 108–282). Several elements of the law became immediately effective on that date. These include the provisions for designation of MUMS drugs under section 573 and for conditional approval of MUMS drugs under section 571. The indexing provisions under section 572 of the law will only become effective upon publication of final implementing regulations. As mandated by the MUMS law, FDA has established the new Office of MUMS Animal Drug Development in the Center for Veterinary Medicine (CVM). FDA is requesting comments on any aspect of implementation of the MUMS legislation (see section II of this document). Requests for further information should be directed to the Office of MUMS Animal Drug Development (see **FOR FURTHER INFORMATION CONTACT**).

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 2, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24880 Filed 11–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0458]

Dietary Supplements; Strategy for the Further Implementation and Enforcement of the Dietary Supplement Health and Education Act of 1994; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of its strategy for the further implementation of the Dietary Supplement Health and Education Act of 1994 (DSHEA). The strategy sets forth a series of specific, integrated research and regulatory measures, including guidance, regulations, and science-based compliance and enforcement mechanisms. Through implementation of these measures, FDA hopes to improve the transparency, predictability, and consistency both of the agency's scientific evaluations of dietary supplement product and ingredient safety, and of its regulatory actions to protect consumers against unsafe dietary supplements and dietary supplements making unauthorized, false, or misleading claims. FDA expects that this improved transparency will help engage stakeholders in the development of further measures to implement DSHEA.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the strategy for the further implementation of DSHEA to Vickey Lutwak, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1775, FAX: 301–436–2636, e-mail: *Vickey.Lutwak@fda.gov*.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Vickey Lutwak, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1775, FAX: 301–436–2636, e-mail: *Vickey.Lutwak@fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In January 2000, FDA's Center for Food Safety and Applied Nutrition (CFSAN) issued its ''Dietary Supplement Strategy: Ten Year Plan'' (the 10-year plan) (accessible at *http://www.cfsan.fda.gov/~dms/ds-strat.html*). The 10-year plan sets as a goal a science-based regulatory program that fully implements DSHEA and affords consumers a high level of confidence in the safety, composition, and labeling of dietary supplement products. The 10-year plan sets forth a series of critical initiatives: (1) Improving the safety of products through, for example, regulations on current good manufacturing practice requirements for dietary supplements, guidance on premarket safety notifications for new dietary ingredients, and better adverse event report monitoring; (2) improving the labeling of products by, for example, clarifying what data and information are needed to substantiate structure/function and related claims in the labeling of a product; (3) clarifying the boundaries between dietary supplements, conventional foods, and drugs; (4) taking enforcement action against unsafe products and products whose labels are inaccurate or

misleading; (5) developing a sound science base for dietary supplement regulation through enhanced research and analytical capabilities and collaboration with governmental and external partners; and (6) expanding outreach to stakeholders.

The strategy now being announced describes a series of specific, integrated steps that will bring CFSAN closer to achieving each of its longer-term goals for DSHEA implementation and enforcement under the 10-year plan. This strategy also is consistent with the ''Dietary Supplement Enforcement Report'' announced in December 2002 (*http://www.fda.gov/oc/mcclellan/chbn.html*), and it incorporates and is in furtherance of CFSAN's 2004 Program Priorities, announced in May 2004 (*http://www.cfsan.fda.gov/~dms/cfsan404.html*). We are making this strategy available to maximize the sharing of information among the agency, consumers, and stakeholders about implementation of DSHEA.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this strategy. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The strategy and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Person with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/~dms/ds-stra3.html*.

Dated: October 22, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24870 Filed 11–4–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0465]

Draft Guidance for Food and Drug Administration Review Staff and Sponsors: Content and Review of Chemistry, Manufacturing, and Control Information for Human Gene Therapy Investigational New Drug Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for FDA Review Staff and Sponsors: Content and Review of Chemistry, Manufacturing, and Control (CMC) Information for Human Gene Therapy Investigational New Drug Applications (INDs)'' dated November 2004. The draft guidance document, when finalized, is intended to provide guidance to FDA review staff and sponsors of human gene therapy products on IND submissions, and on the information FDA CMC reviewers record and assess as part of the review of an original IND.

DATES: Submit written or electronic comments on the draft guidance by February 7, 2005, to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for FDA Review Staff and Sponsors: Content and Review of Chemistry, Manufacturing, and Control (CMC) Information for Human Gene Therapy Investigational New Drug Applications (INDs)'' dated November, 2004. The document provides guidance to help sponsors and reviewers to assess, given the phase of the investigation, whether an IND provides sufficient information to allow the reviewer to evaluate the proper identification (identity testing), quality, purity, and strength (potency) of the investigational product (21 CFR 312.23(a)(7)(i)). The draft guidance document is intended to help ensure that all applicable regulatory requirements are reviewed for the appropriate stage of product development.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http:/*

/www.fda.gov/cber/guidelines.htm or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: November 1, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24879 Filed 11–8–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0554]

Compliance Policy Guide Regarding Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised Compliance Policy Guide (CPG) entitled ''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' The CPG provides written guidance to FDA's and Customs and Border Protection's (CBP's) staff on enforcement of section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulations, which require prior notice for food imported or offered for import into the United States. The CPG has been revised to provide additional guidance to FDA and CBP staff regarding prior notice submissions that do not provide information about the identity of the manufacturing facility of food no longer in its natural state, articles of food imported or offered for import by express courier, prior notice submission time frames, and lastly, gift packs purchased or otherwise acquired by an individual and imported or offered for import for nonbusiness purposes.

DATES: This guidance is final and effective on November 8, 2004. However, you may submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Domenic Veneziano, Office of Regulatory Affairs (HFC–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 703–621–7809.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of revised CPG section 110.310 entitled ''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' This revised guidance is issued with CBP concurrence and explains to FDA and CBP staff the new FDA and CBP policies on enforcement of section 307 of the Bioterrorism Act and its implementing regulations, which require prior notice to FDA of all food imported or offered for import into the United States (68 FR 58974, October 10, 2003 (codified at 21 CFR part 1, subpart I, 1.276 through 1.285)). The original CPG was published December 2003, and was revised June 2004 to include additional guidance regarding food imported or offered for import for noncommercial purposes with a noncommercial shipper. In August 2004, the CPG was revised to provide additional guidance regarding food imported or offered for import for quality assurance, research or analysis purposes only, not for human or animal consumption and not for resale. We (FDA) also revised the CPG in August to extend until November 1, 2004,[1] our enforcement discretion policy concerning certain violations related to the registration number of the manufacturing facility and the shipper, the airway bill number or bill of lading number, and the name and address of the ultimate consignee.

A. Identity of the Manufacturer

FDA is revising the CPG to provide additional guidance regarding prior notice submissions that do not provide information to identify the manufacturing facility of an article of food (i.e., the specific facility that manufactured the food). This information is required for food that is no longer in its natural state. FDA and CBP intend to exercise broad enforcement discretion when this information is required but is not provided, under the following circumstances:

(1) If, after a good faith effort, the person submitting prior notice does not know the registration number of the facility that manufactured the food and the facility is required to be registered, that person instead provides the name and full address of the facility that manufactured the food.

(2) If, after a good faith effort, the person submitting prior notice does not know either the registration number or the name and full address of the facility that manufactured the food, that person instead provides the name and full address of the headquarters of the facility that manufactured the food.

(3) If, after a good faith effort, the person submitting prior notice does not know either the information described in (1) about the facility that manufactured the food, or in (2) about the headquarters of the facility that manufactured the food, that person instead provides the name and full address of the invoicing firm.

FDA is taking these steps to provide additional flexibility in filing prior notice to various kinds of importers while the final prior notice rule is under development. However, if the facility that manufactured the food is a foreign facility that is required to be registered and either its registration number is not provided or the name and address of a different facility (i.e., the manufacturing facility's headquarters or the invoicing firm) is provided, then it will be more difficult and/or may take more time for FDA and CBP to verify the identity of the manufacturing facility and its registration status and to determine whether the article of food is subject to being held under section 801(l) of the Federal Food, Drug, and Cosmetic Act (the act). As a result, if an article of food is imported or offered for import with the manufacturer's name and full address, or the name and address of the manufacturing facility's headquarters or the invoicing firm, instead of the manufacturer's name and registration number, and if FDA has concerns that the food may pose a serious health threat, then the food may be delayed at the port of arrival until the verification is completed. Moreover, as with other types of prior notice violations, FDA may consider the failure to provide required information about the manufacturer as a factor in determining whether and where to examine the article of food. Under all circumstances,

[1] This date was extended to November 7, 2004.

FDA and CBP intend to reject prior notice submissions unless the prior notice includes a valid registration number or an appropriate reason code selected from among those provided in the Prior Notice System Interface (PNSI) and the Automated Broker Interface of the Automated Commercial System (ABI/ACS). Rejected submissions are not confirmed for FDA review.

This change to our enforcement discretion policy pertains to all prior notice submissions, including but not limited to the following: (1) Food carried by or otherwise accompanying an individual that is not for personal use; (2) food arriving by international mail that is not food imported or offered for import for noncommercial purposes with a noncommercial shipper; and (3) food imported or offered for import for quality assurance, research or analysis purposes only, not for human or animal consumption or resale.

Please note that the enforcement discretion policy for identity of manufacturer does not apply to the requirement to provide the registration number assigned to the shipper's facility that is associated with the article of food, if applicable (see 21 CFR 1.281(a)(9) and (b)(8)).

B. Express Courier

FDA also is revising the CPG to provide additional guidance regarding food imported or offered for import by an express courier. The term ''express courier'' is being used as the term ''express consignment operator or carrier'' is defined by CBP at 19 CFR 128.1(a) and includes, for example, Federal Express and United Parcel Service. If prior notice is inadequate because it does not include the required anticipated arrival information and/or planned shipment information, FDA and CBP should typically consider not taking any regulatory action if the article of food is imported or offered for import via an express courier, the person submitting prior notice is not the express courier, prior notice is submitted via the PNSI, and the prior notice includes the shipment's tracking number instead of the required anticipated arrival information and/or planned shipment information. CBP and the Transportation Security Administration have advised express couriers to not reveal to the public certain arrival information. FDA and CBP believe that the tracking number instead of the planned shipment information may provide a means of more accurately determining the arrival information and intend to explore this option while developing the final rule.

C. Time Frame

FDA is revising the CPG to allow prior notice to be submitted more than 5, but less than 10 days before the anticipated date of arrival of the food at the anticipated port of arrival (see 21 CFR 1.279(b)). FDA will typically consider not taking any regulatory action if there is a prior notice violation because the prior notice was submitted more than 5 calendar days before the anticipated date of arrival, provided that the following occurs: (1) The prior notice was submitted less than 10 calendar days before the anticipated date of arrival; and (2) the prior notice was submitted through the PNSI.

FDA is taking these steps to provide additional flexibility in submitting prior notice while the final prior notice rule is under development. FDA and CBP believe that 10 days before the anticipated date of arrival of the food is sufficient time for a carrier to assure that prior notice has been confirmed for FDA review before loading the food. FDA also believes that this extended period will not impact its ability to receive, review, and respond to prior notice submissions of food, although a time period greater than 10 days may be problematic. FDA has limited this guidance to prior notice submissions by PNSI because of the way the ABI/ACS is programmed; when prior notice is submitted through ABI/ACS, the prior notice confirmation number cannot be provided more than 5 calendar days before the anticipated date of arrival.

FDA recognizes that if any information in the prior notice submitted via PNSI changes except the anticipated arrival information, the estimated quantity, or the planned shipment information, after FDA has confirmed the prior notice submission for review, the prior notice should be cancelled and must be resubmitted.

D. Gift Pack Purchased or Otherwise Acquired by An Individual and Imported or Offered for Import for Nonbusiness Purposes

Another change to the CPG relates to gift packs purchased or otherwise acquired by an individual and imported or offered for import for nonbusiness purposes. FDA and CBP staff should typically consider not taking regulatory action if there is a prior notice violation because a single prior notice is submitted for a gift pack and the identity of the facility that packed the gift pack is submitted instead of the identity of the manufacturer, provided that the gift pack is purchased or otherwise acquired by an individual and imported or offered for import for nonbusiness purposes. The policy applies irrespective of where the individual who purchased or otherwise acquired the gift pack lives, irrespective of the type of carrier, and irrespective of whether it involves a commercial or noncommercial shipper. The CPG provides information to FDA and CBP staff about what constitutes a nonbusiness purpose, the identity of a gift pack by FDA product code and examples of gift packs.

E. Policies Contained in the Previous Version of the CPG

Please note that beginning November 8, 2004, FDA and CBP staff should typically consider taking enforcement action including refusal and/or assessment of Civil Monetary Penalties when the prior notice is inadequate, except the circumstances described in the revised CPG. FDA's enforcement discretion policies in the version of the CPG issued in August 2004 concerning certain violations related to the registration number of the shipper, the airway bill number or bill of lading number, and the name and address of the ultimate consignee will end on November 7, 2004, with the exception of the airway bill number or bill of lading number for prior notice submissions by individuals who are not the express courier (see section I.B of this document). Therefore, beginning November 8, 2004, FDA and CBP staff should typically consider taking enforcement action including refusal and/or assessment of Civil Monetary Penalties when the prior notice is inadequate because the registration number for the shipper is required but is not provided; the airway bill number or bill of lading number is not provided or is invalid (except as noted in section I.B of this document); or the name and address of the ultimate consignee is inaccurate because it contains the name and address of the express consignment operator or consolidator instead of the ultimate consignee.

FDA is issuing this document as level 1 guidance consistent with FDA's good guidance practices regulation § 10.115 (21 CFR 10.115). The revised CPG section 110.310 is being implemented on November 8, 2004, without prior public comment, under § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. This document revises policies that are due to take effect on November 8, 2004, so it is urgent that the agencies explain their new enforcement policies before that date.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance document. Submit two copies of written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of the revised CPG is available on the Internet at *http://www.fda.gov/ora* under ''Compliance References.''

Dated: October 28, 2004.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 04–24872 Filed 11–4–04; 8:57 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0562]

Revised Compliance Policy Guide Sec. 110.300—Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised compliance policy guide (CPG) Sec. 110.300 entitled ''Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002'' (registration CPG). The revised CPG provides written guidance to FDA's staff on enforcement of section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulation, which requires, beginning on December 12, 2003, registration with FDA for all domestic and foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States.

DATES: This revised CPG is final upon the date of publication. However, you may submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the revised CPG to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revised CPG may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revised CPG.

Submit written comments on the revised CPG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT:

Food for human consumption: Judith Gushee, Center for Food Safety and Applied Nutrition (HFS–605), Food and Drug Administration, 301–436–2417.

Food for animal consumption: Isabel Pocurull, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 301–827–0175.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of revised CPG Sec. 110.300 entitled ''Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002'' (registration CPG). This revised CPG outlines for FDA staff the agency's policy on enforcement of section 305 of the Bioterrorism Act and its implementing regulation ((68 FR 58894, October 10, 2003); (codified at 21 CFR part 1, subpart H, 1.225 through 1.243)). The Bioterrorism Act and subpart H require that, beginning on December 12, 2003, all domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States must be registered with FDA.

I. Background

On December 19, 2003, FDA issued CPG Sec. 110.300 (the December CPG). The December CPG states that for domestic firms, FDA would initially plan to focus the agency's efforts on educating and otherwise informing the industry on how to comply with the registration of food facilities interim final rule, and that thereafter FDA would enforce the registration provision as appropriate in each situation. We set out in the Regulatory Action Guidance section our enforcement approach.

For foreign facilities, the December CPG referred to the policies set out in CPG Sec. 110.310 entitled ''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002'' (the prior notice CPG).

II. Revised CPG Sec. 110.300

FDA is making only one substantive change in the registration CPG. Specifically, the revised CPG provides that, on November 8, 2004, FDA is fully implementing the agency's enforcement policy for domestic food facilities, which was set out in the Regulatory Action Guidance section of the December CPG. For foreign facilities, the registration CPG continues to state that generally, the registration requirement for the facilities of foreign manufacturers and shippers will be enforced in accordance with the policies set out in the prior notice CPG. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability for the revision to the prior notice CPG, which is being issued under § 10.115(g)(2) (21 CFR 10.115(g)(2)) as level 1 guidance that is effective November 8, 2004.

FDA is also issuing the revised registration CPG as level 1 guidance consistent with FDA's good guidance practices regulation (§ 10.115). Revised CPG Sec. 110.300 is being implemented immediately without prior public comment, under § 10.115(g)(2), because FDA has determined that prior public participation is not feasible or appropriate. Revision of FDA's prior notice enforcement policy directly affects the agency's enforcement of the registration requirement for foreign manufacturers and shippers. Given this relationship, it is appropriate that FDA coordinate announcement and implementation of the agency's revised enforcement policy for food facilities registration with the agency's comparable actions for the prior notice of imported food requirement.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the revised CPG. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

An electronic version of this guidance is available on the Internet at *http://www.fda.gov/ora* under ''Compliance References.''

Dated: November 2, 2004.

Steve M. Niedelman,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 04–24873 Filed 11–4–04; 8:57 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0466]

Draft Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act.'' This draft guidance describes the amount, type, and quality of evidence that FDA recommends a manufacturer have to substantiate a claim under section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act (act). FDA is also announcing its decision not to publish additional guidance on applying the structure/function rule at this time.

DATES: Submit written or electronic comments on the draft guidance and the collection of information provisions by January 10, 2005, to ensure adequate consideration in preparation of any final guidance document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments on the draft guidance document and the collection of information provisions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft guidance and the collection of information to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Vickey Lutwak, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375, fax: 301–436–2636, e-mail: *Vickey.Lutwak@cfsan.fda.gov*

SUPPLEMENTARY INFORMATION:

I. Background—Substantiation Draft Guidance

Section 403(r)(6) of the act (21 U.S.C. 343(r)(6)) requires that a manufacturer of a dietary supplement making a nutritional deficiency, structure/function, or general well-being claim have substantiation that the claim is truthful and not misleading.[1]

This draft guidance document is intended to describe the amount, type, and quality of evidence FDA recommends a manufacturer have to substantiate a claim under section 403(r)(6) of the act. This draft guidance document is limited to issues pertaining to substantiation under section 403(r)(6) of the act; it does not extend to substantiation issues that may exist in other sections of the act.

FDA intends to apply a standard for substantiating claims for dietary supplements that is consistent with the Federal Trade Commission's (FTC's) standard for dietary supplements and other health related products of ''competent and reliable scientific evidence.'' FDA seeks comments on this draft guidance only as they relate to FDA's use and application of the standard and approach that are described in the guidance. We (FDA) are not seeking comment on FTC's application, use, or interpretation of their standard.

The agency has adopted good guidance practices (GGPs) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (21 CFR 10.115). The draft guidance document is being issued as a Level 1 guidance consistent with FDA's GGPs. The draft guidance document represents the agency's current thinking on the amount, type, and quality of evidence FDA recommends a manufacturer have to substantiate a claim under section 403(r)(6) of the act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of the applicable statutes and regulations.

[1] Under section 403(r)(6)(A) of the act (21 U.S.C. 343(r)(6)(A)), such a statement is one that ''claims a benefit related to a classical nutrient deficiency disease and discloses the prevalence of such disease in the United States, describes the role of a nutrient or dietary ingredient intended to affect the structure or function in humans, characterizes the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function, or describes general well-being from consumption for a nutrient or dietary ingredient.''

II. Paperwork Reduction Act of 1995—Substantiation Draft Guidance

This draft guidance document contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). Under the PRA, Federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is hereby publishing notice of the proposed collection of information set forth in this document.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Draft Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act; Availability

Section 403(r)(6) of the act requires that a manufacturer of a dietary supplement making a nutritional deficiency, structure/function, or general well-being claim have substantiation that the statement is truthful and not misleading. This draft guidance document is intended to describe the amount, type, and quality of evidence FDA recommends a dietary supplement manufacturer have to

substantiate a claim under section 403(r)(6) of the act. This guidance does not discuss the types of claims that can be made concerning the effect of a dietary supplement on the structure or function of the body, nor does it discuss criteria to determine when a statement about a dietary supplement is a disease claim.

FDA estimates the burden for this information collection as follows:

TABLE 1.—ESTIMATED REPORTING BURDEN[1]

Claim type	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Widely known, established	667	1	667	1	667
Pre-existing, not widely established	667	1	667	120	80,040
Novel	667	1	667	120	80,040
Annual one time burden hours					160,747

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

Dietary supplement manufacturers will only need to collect information to substantiate their product's nutritional deficiency, structure/function, or general well-being claim if they chose to place a claim on their product's label. Gathering evidence on their product's claim is a one time burden; they collect the necessary substantiating information for their product as required by section 403(r)(6) of the act.

The standard discussed in the guidance for substantiation of a claim on the labeling of a dietary supplement is consistent with standards set by the FTC for dietary supplements and other health related products that the claim be based on competent and reliable scientific evidence. This evidence standard is broad enough that some dietary supplement manufacturers may only need to collect peer-reviewed scientific journal articles to substantiate their claims; other dietary supplement manufacturers whose products have properties that are less well documented may have to conduct studies to build a body of evidence to support their claims. It is unlikely that a dietary supplement manufacturer will attempt to make a claim when the cost of obtaining the evidence to support the claim outweighs the benefits of having the claim on the product's label. It is likely that manufacturers will seek substantiation for their claims in the scientific literature.

The time it takes to assemble the necessary scientific information to support their claims depends on the product and the claimed benefits. If the product is one of several on the market making a particular claim for which there is adequate publicly available and widely established evidence supporting the claim, then the time to gather supporting data will be minimal; if the product is the first of its kind to make a particular claim or the evidence supporting the claim is less publicly available or not widely established, then gathering the appropriate scientific evidence to substantiate the claim will be more time consuming.

FDA assumes that it will take only about an hour to assemble information needed to substantiate a claim on a particular dietary supplement when the claim is widely known and established. These are likely products whose claimed effects have been long studied and the results of the studies are widely available in credible textbook and reference books, therefore making the substantiation burden minimal. FDA believes it will take closer to 120 hours to assemble supporting scientific information when the claim is novel or when the claim is pre-existing but the scientific underpinnings of the claim are not widely established. These are claims that may be based on emerging science, where conducting literature searches and understanding the literature takes time. It is also possible that references for claims made for some dietary ingredients or dietary supplements may primarily be found in foreign journals and in foreign languages or in the older, classical literature where it is not available on computerized literature databases or in the major scientific reference databases, such as the National Library of Medicine's literature database, all of which increases the time of obtaining substantiation.

In the final rule on statements made for dietary supplements concerning the effect of the product on the structure or function of the body (structure/function final rule (65 FR 1000, January 6, 2000)), FDA estimated that there were 29,000 dietary supplement products marketed in the United States (65 FR 1000 at 1045). Assuming that the flow of new products is 10 percent per year, then 2,900 new dietary supplement products will come on the market each year. The structure/function final rule estimated that about 69 percent of dietary supplements have a claim on their labels, most probably a structure/function claim (65 FR 1000 at 1046). Therefore, we assume that supplement manufacturers will need time to assemble the evidence to substantiate each of the 2,001 claims (2,900 x 69%) made each year. If we assume that the 2,001 claims are equally likely to be pre-existing widely established claims, novel claims, or pre-existing claims that are not widely established, then we can expect 667 of each of these types of claims to be substantiated per year. Row 1 of Table 1 of this document shows that the annual burden hours associated with assembling evidence for claims is 160,747 (667 x 1hr, 667 x 120 hrs, and 667 x 120 hrs).

There are no capital costs or operating and maintenance costs associated with this information collection.

III. Guidance on Applying the Structure/Function Rule

On January 6, 2000, FDA published a final rule, often referred to as the ''structure/function rule,'' implementing section 403(r)(6) of the act concerning the types of statements that can be made regarding the effect of a dietary supplement on the structure or function of the body (65 FR 1000). This rule, codified in § 101.93(f) (21 CFR 101.93(f) and (g)), distinguishes between disease claims and structure/function claims. As discussed in § 101.93, if the label or labeling of a product marketed as a dietary supplement bears a disease claim as defined in that rule, the product will be subject to regulation as a drug unless the claim is an authorized health claim for which the product qualifies.

In the preamble to the final rule, FDA stated that it intended to publish a guidance on applying this rule. In a notice published in the **Federal Register** on February 22, 2001 (66 FR 11172), FDA invited public comments on the topics that should be included in such a guidance. FDA agrees with the comments that were submitted stating that the preamble to the structure/function rule and the numerous courtesy letters that the agency has issued since the enactment of section 403(r)(6) provide considerable guidance to dietary supplement manufacturers about the types of claims that the agency considers to be disease claims. Therefore, FDA has decided not to issue such a guidance at this time. FDA will continue to monitor dietary supplement manufacturers' compliance with section 403(r)(6) of the act and § 101.93, take enforcement action where appropriate, and reconsider the possibility of issuing guidance if future developments warrant.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the substantiation draft guidance document. (FDA is not specifically seeking comment on its decision not to publish additional guidance on the structure/function rule.) Two copies of mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov* or *http://www.fda.gov/dockets/ecomments*. Once on this site, select 2004D–0466 ''Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act'' and follow the directions. Copies of this draft guidance may be obtained on the Internet from the CFSAN homepage at *http://www.cfsan.fda.gov*.

Dated: October 25, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24871 Filed 11–4–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Border and Transportation Security; Notice to Aliens Included in the United States Visitor and Immigrant Status Indicator Technology System (US–VISIT)

AGENCY: Border and Transportation Security Directorate, DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (Department or DHS) has established the United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT), an integrated, automated entry-exit system that records the arrival and departure of aliens; verifies aliens' identities; and authenticates aliens' travel documents through comparison of biometric identifiers. On August 31, 2004, DHS implemented the second phase of US–VISIT by publishing an interim final rule in the **Federal Register** at 69 FR 53318 authorizing DHS to require certain aliens to provide fingerprints, photographs or other biometric identifiers upon arrival in the United States at the 50 most trafficked land ports of entry. The interim rule also authorized DHS to identify the specific land border ports in a separate notice published in the **Federal Register**.

This notice identifies the 50 most trafficked land ports of entry where US–VISIT will be implemented. The notice further provides an estimated date when each port will begin enrolling aliens in US–VISIT at the secondary inspection area. Pursuant to the August 31, 2004 interim rule, all 50 ports of entry will begin enrolling aliens in US–VISIT no later than December 31, 2004.

In addition, as stated in the August 31, 2004 interim rule, this notice identifies only land ports of entry in which aliens will be enrolled in US–VISIT upon entry into the United States. DHS will announce, through a future notice in the **Federal Register**, the piloting of a biometric data collection program at a limited number of sites as part of US–VISIT processing upon departure from the United States.

FOR FURTHER INFORMATION, CONTACT: Michael Hardin, Senior Policy Advisor, US–VISIT, Border and Transportation Security, Department of Homeland Security, 1616 N. Fort Myer Drive, 18th Floor, Arlington, Virginia 22209, (202) 298–5200.

The 50 Land Border Ports of Entry (POEs) that will begin biometric data collection as part of US–VISIT processing no later than December 31, 2004 are as follows:

Estimated start date of November 15, 2004 (6):

Port Huron POE, Blue Water Bridge, Highway 69 and International Border, Port Huron, Michigan
Douglas POE, Rte 191 and International Border, Douglas, AZ
Lincoln-Juarez Bridge POE, Laredo, TX
Gateway to the Americas International Bridge POE, Laredo, TX
Columbia Solidarity Bridge POE, Laredo, TX
World Trade Bridge POE, Laredo, TX

Estimated start date of December 6, 2004 (11):

Niagara Falls POE (to include Lewiston-Queenstown, Whirlpool, and Rainbow Bridges), Niagara Falls, NY
Peace Bridge POE, Moore Drive and International Border, Buffalo, NY
Detroit Ambassador Bridge POE, Detroit, MI
Detroit-Windsor Tunnel POE, Detroit, MI
Lukeville POE, Highway 85 & International Border, Lukeville, AZ
Nogales East (Deconcini POE), Nogales, AZ
Nogales West (Mariposa POE), Nogales, AZ
San Luis POE, Highway 95 & International Border, San Luis, AZ
Andrade POE, Andrade, CA
Calexico East-Imperial Valley POE, Rte 111 and International Border, Calexico, CA
Calexico West POE, Rte 111 and International Border, Calexico, CA

Estimated start date of December 13, 2004 (11):

Fabens POE 18051, Island Guadalupe, Fabens, TX
Presidio POE, Border Station Highway 67, Presidio, TX 79845
Santa Teresa POE, Santa Teresa, NM
Otay Mesa POE, 9777 Via De La Amistad, San Diego, CA
San Ysidro POE, Highway 5 and International Border, San Diego, CA
Tecate POE, Hwy 188 and International Border, Tecate, CA
Blaine-Pacific Highway POE, Rte. 543 and International Border, Blaine, WA
Blaine-Peace Arch POE, Interstate 5 and International Border, Blaine, WA
Lynden POE, Rte. 539 and International Border, Lynden, WA
Point Roberts POE, Tyee Drive and Roosevelt Way, Point Roberts, WA
Sumas POE, Cherry Street and International Avenue, Sumas, WA

Estimated start date of December 20, 2004 (10):

Champlain POE, Highway 87 and International Border, Champlain, NY
Massena POE, Rte. 45 and International Border, Rooseveltown, NY
Thousand Islands POE, Highway 81 and International Border, Alexandria Bay, NY

Sault Ste. Marie POE, The International Bridge, Highway 75 and International Border, Sault Ste. Marie, MI

Bridge of the Americas POE, El Paso, TX

Paso del Norte Bridge POE, El Paso, TX

Ysleta POE, Ysleta-Zaragoza Bridge, El Paso, TX

Derby Line POE, Highway 91 and International Border, Derby Line, VT

Calais—Ferry Point POE, Main Street and International Border, Calais, ME

International Falls POE, Rte 53 and International Border, International Falls, MN

Estimated start date of December 27, 2004 (12):

Gateway International Bridge POE, Brownsville, TX

Brownsville/Matamoros Bridge POE, Brownsville, TX

Hidalgo POE, McAllen-Hidalgo-Reynosa International Bridge, McAllen, TX

Los Indios POE, Free Trade Bridge at Los Indios, Los Indios, TX

Los Tomates/Veterans International Bridge POE, Brownsville, TX

Pharr POE, Pharr-Reynosa International Bridge, Pharr, TX

Progreso POE, Progreso/Nuevo Progreso International Bridge, Progreso, TX

Rio Grande City POE, Starr-Camargo Bridge, Rio Grande City, TX

Roma POE, Roma-Ciudad Miguel Alemán Bridge, Highway 83 and International Border, Roma, TX

Del Rio POE, Del Rio/Cuidad Acuna International Bridge, Garfield Avenue and International Border, Del Rio, TX

Eagle Pass Bridge I POE, Eagle Pass/Piedras Negras Bridge, Highway 57 and International Border, Eagle Pass, TX

Eagle Pass Bridge II POE, Camino Real International Bridge, Highway 57 and International Border, Eagle Pass, TX

DHS has included these dates as estimates only. Should changes occur following the publication of this notice, revised estimated dates can be found on the US–VISIT Web site at *http://www.dhs.gov/us-visit*. All of these listed ports of entry, however, will begin US–VISIT implementation by December 31, 2004.

Dated: October 11, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–24966 Filed 11–8–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF DEFENSE

Army Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement/Environmental Impact Report for the South Bay Salt Ponds Restoration Project and the South San Francisco Bay Shoreline Study

AGENCIES: U.S. Fish and Wildlife Service, Interior; U.S. Army Corps of Engineers, Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), the U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (Corps) intend to prepare a joint programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR) to address the potential impacts of the South Bay Salt Ponds Restoration Project and the South San Francisco Bay Shoreline Study, San Francisco Bay, California. The two projects are closely interrelated and proposed planning and actions would be done in coordination with each other. The California Department of Fish and Game (CDFG) will be the lead agency under the California Environmental Quality Act (CEQA).

Federal Lead Agencies Proposed and Connected Actions

The Federal Joint Lead Agencies are proposing to undertake two closely related actions that would help prevent flooding and provide for the restoration of the South Bay Salt Ponds. USFWS proposes to prepare a long-term restoration plan for the South Bay Salt Ponds, which includes managed pond and tidal marsh habitat, as well as flood management and recreation components. The proposed action would provide for implementation of the first phase (Phase 1) of the South Bay Salt Ponds restoration plan. The area of the FWS proposed project falls within the larger scope of the actions the Corps is proposing along South San Francisco Bay shoreline. The Corps is proposing to implement a series of activities for tidal and fluvial flood damage reduction, environmental restoration, and related purposes along the South San Francisco Bay shoreline. The Corps' feasibility study may include most of the components of the South Bay Salt Pond Restoration Project. Thus these interconnected actions are deserving of one cohesive EIS/EIR analysis.

Two public scoping meetings will be held to solicit comments on the environmental effects of the range of potential projects and the appropriate scope of the EIS/EIR. The public is invited to comment on environmental issues to be addressed in the EIS/EIR during these meetings.

DATES: Written comments from all interested parties are encouraged and must be received on or before December 9, 2004. The first of two public scoping meetings will be held on Tuesday, November 16, 2004, from 7 p.m. to 9 p.m. at the NASA Research Center, Building 943, Moffett Field, California. A second scoping meeting will be held on Wednesday, November 17, 2004, from 7 p.m. to 9 p.m. at Centennial Hall, 22292 Foothill Boulevard, Room 4, in Hayward, California. Persons needing reasonable accommodations in order to attend and participate in the public scoping meetings should contact Tim Corrigan at (510) 286–0325 sufficiently in advance of the meeting to allow time to process the request.

ADDRESSES: Written comments and requests for information should be sent to Margaret Kolar, Refuge Manager, U.S. Fish and Wildlife Service, San Francisco Bay NWR Complex. PO Box 524, Newark, California 94560, or Yvonne LeTellier, Project Manager, U.S. Army Corps of Engineers, 333 Market Street 8th Floor, San Francisco, California 94105–2197. Written comments may also be sent by facsimile to (510) 792–5828, or via e-mail through the public comments link on the South Bay Salt Ponds Restoration Project Web site, at *www.southbayrestoration.org/Question__Comment.html*. All comments received, including names and addresses, will become part of the administrative record and available to the public.

FOR FURTHER INFORMATION CONTACT: Margaret Kolar, Refuge Manager, U.S. Fish and Wildlife Service, San Francisco Bay NWR Complex, (510) 792–0222, or Yvonne LeTellier, Project Manager, U.S. Army corps of Engineers, (415) 977–8466. For questions concerning the CEQA process, contact Carl Wilcox, Habitat Conservation Manager, California Department of fish and Game, Region 3 Headquarters, PO Box 47, Yountville, California, 94559, telephone: (707) 944–5525.

SUPPLEMENTARY INFORMATION: The joint programmatic EIS/EIR will address both the proposed South Bay Salt Ponds Restoration Project and the South San Francisco Bay Shoreline Study. USFWS and the Corps propose to integrate the

planning for these two projects, which have similar geographic scope and include restoration and flood management components.

Background

South Bay Salt Ponds Restoration Project

The South Bay Salt Ponds Restoration Project area comprises 15,100 acres of salt ponds and adjacent habitats in South San Francisco Bay which USFWS and CDFG acquired from the Cargill Salt Company in 2003. USFWS owns and manages the 8,000-acre Alviso pond complex and the 1,600-acre Ravenswood pond complex. CDFG owns and manages the 5,500-acre Eden Landing pond complex.

The Alviso pond complex consists of 25 ponds on the shores of the South Bay in Fremont, San Jose, Sunnyvale and Mountain View, in Santa Clara and Alameda Counties. The pond complex is bordered by the Palo Alto Baylands Nature Preserve and Charleston Slough on the west, on the south by Moffett Naval Air Station and Sunnyvale Baylands Park, and to the east by Coyote Creek and Cushing Parkway in Fremont. The Ravenswood pond complex consists of seven ponds on the bay side of the Peninsula, along both sides of Highway 84 west of the Dumbarton Bridge, and on the bayside of the developed areas of the City of Menlo Park in San Mateo County. Bayfront Park is directly west of the pond complex, and the Dumbarton Bridge approach and the Union Pacific Railroad are along its southern border.

The Eden Landing pond complex consists of 23 ponds on the shores of the East Bay, west of Hayward and Union City in Alameda County. The approach to the San Mateo Bridge and the CDFG Eden Landing Ecological Reserve form the northern boundary of the acquisition area. Alameda Creek Flood Control Channel and the Coyote Hills form the southern boundary.

South San Francisco Bay Shoreline Study

The South San Francisco Bay Shoreline Study area extends along South San Francisco Bay and includes the three pond complexes within the South Bay Salt Ponds Restoration Project area, which are described above, as well as shoreline and floodplain areas in the counties of Alameda, San Mateo, and Santa Clara.

The South San Francisco Bay Shoreline Study area includes the Alameda Creek Flood Control Channel in Alameda County, areas in San Mateo and Santa Clara Counties between the Ravenswood and Alviso pond complexes, including the City of Palo Alto, and several creeks within the Alviso pond complex in Santa Clara County. Three other parcels—Moffett Field (owned by NASA–Ames), Pond A4 (Alviso pond complex; owned by the Santa Clara Valley Water District), and Pond A18 (Alviso pond complex; owned by the City of San Jose)—are adjacent to the study area.

Project Description

South Bay Salt Ponds Restoration Project

The overarching goal of the South Bay Salt Ponds Restoration Project is to restore and enhance wetlands in the South San Francisco Bay while providing for flood management and wildlife-oriented public access and recreation.

The following project objectives were adopted by the South Bay Salt Ponds Restoration Project's Stakeholder Forum which includes representatives of local governments, environmental organizations, neighboring landowners, businesses, and community organizations:

1. Create restore, or enhance habitats of sufficient size, function, and appropriate structure to:

a. Promote restoration of native special-status plants and animals that depend on South San Francisco Bay habitat for all part of their life cycles.

b. Maintain current migratory bird species that utilize existing salt ponds and associated structures such as levees.

c. Support increased abundance and diversity of native species in various South San Francisco Bay aquatic and terrestrial ecosystem components, including plants, invertebrates, fish, mammals, birds, reptiles and amphibians.

2. Maintain or improve existing levels of flood protection in the South Bay area.

3. Provide public access and recreational opportunities compatible with wildlife and habitat goals.

4. Protect or improve existing levels of water and sediment quality in the South Bay, and take into account ecological risks caused by restoration.

5. Implement design and management measures to maintain or improve current levels of vector management, control predation on special-status species, and manage the spread of non-native species.

6. Protect the services provided by existing infrastructure (*e.g.,* power lines, railroads).

USFWS and CDFG reviewed the proposed project objectives to ensure compliance with legal mandates, such as compatibility of wildlife with public access. Two additional evaluation factors were identified in the Alternatives Development Framework for comparative analysis:

7. *Cost Effectiveness:* Consider costs of implementation, management, and monitoring so that planned activities can be effectively executed with available funding.

8. *Environmental Impact:* Promote environmental benefit and reduce impacts to the human environment.

The South Bay salt ponds are now being managed by the U.S. Fish and Wildlife Service and the California Department of Fish and Game under an Initial Stewardship Plan which was evaluated in a March 2004 Final Environmental Impact Statement/ Environmental Impact Report. The long-term restoration plan being evaluated in the present NEPA/CEQA process may include general plans for the entire project area as well as detailed design plans for a specific Phase I project.

South San Francisco Bay Shoreline Study

The Corps plans to prepare a Feasibility Report for the South San Francisco Bay Shoreline Study, pursuant to the following resolution by the U.S. House of Representatives Transportation and Infrastructure Committee, adopted July 24, 2002:

''Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, that the Secretary of the Army is requested to review the Final Letter Report for the San Francisco Bay Shoreline Study, California, dated July 1992, and all related interims and other pertinent reports to determine whether modifications to the recommendations contained therein are advisable at the present time in the interest of tidal and fluvial flood damage reduction, environmental restoration and protection and related purposes along the South San Francisco Bay shoreline for the counties of San Mateo, Santa Clara and Alameda, California.''

The Corps proposes to conduct the South San Francisco Bay Shoreline Study in coordination with the South Bay Salt Ponds Restoration Project and in partnership with USFWS and CDFG. It is possible that the Corps' Feasibility Report may be released after the completion of the joint programmatic EIS/EIR, and supplemental NEPA documentation may be required to address the potential impacts of the South San Francisco Bay Shoreline Study and future phases of the long-term South Bay Salt Ponds Restoration

Project. If a supplemental NEPA document is required, the agencies propose to tier off the joint programmatic EIS/EIR.

Alternatives

The joint programmatic EIS/EIR will consider a range of alternatives and their impacts, including the No Action Alternative. Scoping will be an early and open process designed to determine the issues and alternatives to be addressed in the EIS/EIR. For example, the range of alternatives may include varying mixes of managed ponds and tidal marsh habitat as well as varying levels and means of flood management and recreation and public access components which respond to the project objectives.

Content of the EIS/EIR

The EIS/EIR will identify the anticipated effects of the project alternatives (negative and beneficial) and describe and analyze direct, indirect, and cumulative potential environmental impacts of the project alternatives, including the No Action Alternative, in accordance with NEPA (40 CFR parts 1500–1508) and CEQA. For each issue listed below, the EIS/EIR will include a discussion of the parameters used in evaluating the impacts as well as recommended mitigation, indicating the effectiveness of mitigation measures proposed to be implemented and what, if any, additional measures would be required to reduce the impacts to a less-than-significant level. The EIS/EIR will include a proposed programmatic analysis of the long-term restoration project and flood management and recreation and public access components as well as a project-level analysis of the proposed Phase 1 project.

The list of issues presented below is preliminary both in scope and number. These issues are presented to facilitate public comment on the scope of the EIS/EIR, and are not intended to be all-inclusive or to be a predetermination of impact topics to be considered.

Biological Resources

The EIS/EIR will address the following issues and potential detrimental and beneficial impacts related to biological resources:

- Effects on population size for endangered species and other species of concern, including California clapper rail, snowy plover, California least tern, salt marsh harvest mouse, Chinook salmon and steelhead trout, and opportunities for movement and breeding between populations.
- Shifts in populations of migratory waterfowl and shorebirds.
- Increased habitat connectivity for all organisms that use multiple marsh and/or aquatic habitats, including birds, mammals, and fish.
- Potential for improved habitat connectivity with adjacent upland habitats.
- Potential loss of hypersaline wetlands and their unique communities.
- Reduction in predation for species of concern with larger habitat blocks.
- Increased nursery habitat in wetlands for fish.
- Potential for salmonid entrainment into managed ponds.
- Effects of *Spartina alterniflora* and the hybrid of this species.

Hydrology and Flood Management

The EIS/EIR will address the following issues and potential detrimental and beneficial impacts related to hydrology and flood management:

- Effects on the tidal regime and mixing, and related effects on salinity of Bay waters.
- Effects on high-tide water levels.
- Changes in tidal hydrodynamics, including tidal prism and tidal range in tidal sloughs, and resulting changes in channel geometry.
- Effects on flood flow conveyance as a result of converting salt ponds to tidal marsh.
- Potential decrease in wave energy associated with tidal marsh restoration and reduced erosion of flood protection levees.

Water and Sediment Quality

The EIS/EIR will address the following issues and potential detrimental and beneficial impacts related to water and sediment quality:

- Effects of salt pond levee breaches, including changes in salinity, turbidy, dissolved oxygen, BOD, and metals, PCBs and other pollutants of concern.
- Changes in residence time of water in the South Bay and related effects on water quality.
- Changes in mercury and/or methyl mercury concentrations, and other pollutants of concern, in Bay waters and sloughs.
- Potential to mobilize existing sediment contaminants, including mercury, PCBs, and other pollutants of concern.
- Potential contamination from outside sources, including urban runoff, wastewater discharges, imported sediment and atmospheric deposition.

Recreation and Public Access

The EIS/EIR will address the project's effects on existing recreation facilities and their use as well as the potential for expansion or creation of new facilities. The benefits and impacts of increased public access on biological resources and achieving the other project objectives will also be addressed.

Economics

The EIS/EIR will evaluate the economic effects of the alternatives, including effects on commercial fishing of Bay shrimp.

Cumulative Impacts

The EIS/EIR will examine the cumulative impacts of past, ongoing, and probable future projects affecting tidal marsh and estuarine habitats in the South Bay.

Environmental Analysis Process

The EIS/EIR will be prepared in compliance with NEPA and Council on Environmental Quality Regulations, contained in 40 CFR parts 1500–1508; and with CEQA, Public Resources Code Sec 21000 *et seq.,* and the CEQA Guidelines as amended. Because requirements for NEPA and CEQA are somewhat different, the document must be prepared to comply with whichever requirements are more stringent. USFWS and the Corps will be Joint Lead Agencies for the NEPA process and CDFG will be the Lead Agency for the CEQA process. In accordance with both CEQA and NEPA, these Lead Agencies are responsible for the scope, content, and legal adequacy of the document. Therefore, all aspects of the EIS/EIR scope and process will be fully coordinated between these three agencies.

The scoping process will include the opportunity for public input during two public meetings and by written comments submitted during the 30 day scoping period.

The draft EIS/EIR will incorporate public concerns associated with the project alternatives identified in the scoping process and will be distributed for at least a 45-day public review and comment period. During this time, both written and verbal comments will be solicited on the adequacy of the document. The final EIS/EIR will address the comments received on the draft during public review and will be made available to all commenters on the draft EIS/EIR.

The final step in the Federal EIS process is the preparation of a Record of Decision, a concise summary of the decisions made by USFWS and the Corps. The Record, or Records, of Decision may be published no earlier than thirty days after publication of the Notice of Availability of the final EIS.

The final step in the State EIR process is certification of the EIR, which includes preparation of a Mitigation Monitoring and Reporting Plan and adoption of its findings, should the project be approved.

This notice is provided pursuant to regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1501.7 and 1506.6).

Dated: November 1, 2004.

Russell Joe Bellmer,

Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

Dated: November 1, 2004.

Philip T. Feir,

Lieutenant Colonel, U.S. Army, Commanding.

[FR Doc. 04–24885 Filed 11–8–04; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–134–1610–DQ–CCCA]

Notice of Availability of Record of Decision for the Colorado Canyons National Conservation Area Resource Management Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Bureau of Land Management (BLM) management policies, the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000, the BLM announces the availability of the Resource Management Plan (RMP)/Record of Decision (ROD) for the Colorado Canyons National Conservation Area (NCA). The NCA is located in Mesa County, CO and Grand County, UT. The Colorado State Director will sign the RMP/ROD, which becomes effective immediately.

ADDRESSES: Copies of the NCA RMP/ROD are available upon request from the Colorado Canyons National Conservation Area Manager, Grand Junction Field Office, Bureau of Land Management, 2815 H Road, Grand Junction, CO 81506; or via the Internet at *http://www.co.blm.gov/cocanplan/*. Copies may be obtained by contacting Jane Ross, Grand Junction Field Office at (970) 244–3027. Copies are also available at the following Mesa County Public Library District locations during regular business hours: Central Library, 530 Grand Avenue, Grand Junction, CO 81501; Fruita Branch, 325 East Aspen Avenue, Fruita, CO 81521; Palisade Branch, 711 Iowa Street, Palisade, CO 81526; Clifton Branch, Peachtree Shopping Center, 3225 I–70 Business Loop A–1, Clifton, CO 81520; Orchard Mesa Branch, 2736 Unaweep Avenue, Grand Junction, CO 81503.

The planning documents are available for inspection at the BLM Grand Junction Field Office during normal working hours, 7:30 a.m. through 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact Jane Ross (970) 244–3027, Planning and Environmental Coordinator (*jane_ross@co.blm.gov*), or Raul Morales at (970) 244–3066 (*raul_morales@co.blm.gov*), acting Colorado Canyons NCA Manager, Bureau of Land Management, Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506.

SUPPLEMENTARY INFORMATION: The Colorado Canyons NCA RMP/ROD was developed with broad public participation through a two-year collaborative planning process. The CCNCA, located west of Grand Junction, includes 122,300 rugged acres of sandstone canyons, natural arches, spires, and alcoves carved into the Colorado Plateau along a 24-mile stretch of the Colorado River. Included in the CCNCA are 75,550 acres of wilderness designated as the Black Ridge Canyons Wilderness. At the western boundary of the CCNCA, 5,200 acres stretch into eastern Utah.

The approved Colorado Canyons NCA RMP is essentially the same as the Proposed Colorado Canyons NCA RMP/Final Environmental Impact Statement (PRMP/FEIS), published on August 6, 2004. No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the PRMP/FEIS. There were no protests. As a result, only minor editorial modifications were made in preparing the RMP/ROD.

- An errata sheet is included with the RMP/ROD that identifies the location of the corrections in the PRMP/FEIS.

Raul Morales,

Manager, Colorado Canyons National Conservation Area.

[FR Doc. 04–24421 Filed 11–8–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–05–1020–PH]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western Montana Resource Advisory Council will meet as indicated below.

DATES: The next regular meeting of the Western Montana RAC will be held January 20, 2005, at the Butte Field Office, 106 N. Parkmont, Butte, Montana beginning at 9 a.m. The public comment period will begin at 11:30 a.m. and the meeting is expected to adjourn at approximately 4 p.m.

Another meeting is planned for May 4, 2005 at the Missoula Field Office, 3255 Fort Missoula Road in Missoula, Montana beginning at 10 a.m. on May 4. The public comment period will begin at 11:30 a.m. and the meeting is expected to adjourn at approximately 4 p.m.

FOR FURTHER INFORMATION CONTACT: For the Western Montana RAC, contact Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone (406) 533–7617.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the January 20 meeting, topics we plan to discuss include: big horn sheep habitat, the Butte Resource Management Plan travel management and proposed planning scenario, and the Whitetail Basin research project.

Topics for the May 4 meeting will be determined at the January meeting.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to

attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

Dated: November 2, 2004.

Steven Hartmann,

Acting Field Manager.

[FR Doc. 04–24891 Filed 11–8–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF JUSTICE

Antitrust Division

Competitive Impact Statement, Proposed Final Judgment and Complaint; United States v. Connors Bros. Income Fund and Bumble Bee Seafoods, LLC

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Connors Bros. Income Fund and Bumble Bee Seafoods, LLC,* Civil Case No: 1:04 CV 01494. The proposed Final Judgment is subject to approval by the Court after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), including expiration of the statutory 60-day public comment period.

On August 31, 2004, the United States filed a Compliant alleging that the acquisition by Connors Bros. Income Fund (''Connors'') of Bumble Bee Seafoods LLC (''Bumble Bee'') would, as originally proposed, violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition for the sale of sardine snacks in the Untied States. Connors' sardine snack brands account for approximately 63 percent of the sales in the market, while Bumble Bee's sardine snack brand accounts for about 13 percent. The remaining share is comprised of small independent fringe players or regional sellers of sardine snacks unlikely to be able to expand to the level required to compensate for the loss of a competitor of Bumble Bee's significance.

To preserve competition, the proposed Final Judgment, filed the same time as the Complaint, requires Connors to divest its Port Clyde, Commander, Possum, Bulldog, Admiral, and Neptune brands (but not Neptune brand clam products) and related assets to an acquirer, including, at the acquirer's option, no more than one of the following Connors' processing assets: The Bath, Maine plant or the Grand Manan, New Brunswick plant, to an acquirer acceptable to the United States in its sole discretion. A Competitive Impact Statement, filed by the United States, describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215 North, 325 Seventh Street, NW., 20530 (telephone: 202/514–2692) and at the Office of the Clerk of the Untied States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 500, Washington, DC 20530 (telephone 202/307–6351).

J. Robert Kramer, II,

Director of Operations, Antitrust Division.

United States of America, U.S. Department of Justice, Antitrust Division, 325 7th Avenue, NW., Suite 500, Washington, DC 20530, Plaintiff, v. Connors Bros. Income Fund, 669 Main Street, Blacks Harbour, New Brunswick, Canada, E5h 1K1, and Bumble Bee Seafoods, LLC, 9655 Granite Ridge Drive, San Diego, CA 92123-2674, Defendants; Judge: John D. Baker.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' and ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding on August 31, 2004.

I. Nature and Purpose of the Proceeding

Defendant Connors Bros. Income Fund (''Connors''), an income trust fund organized under Canadian law, entered into a Transaction Agreement, dated February 10, 2004, in which it proposed to acquire Bumble Bee Seafoods, LLC (''Bumble Bee'') from Centre Capital Investors III, L.P. (The ''Transaction''). Connors partially financed its acquisition through a subscription agreement, and those funds were held in escrow pending final consummation of the Transaction. Under Canadian law, the escrow agreement expired on April 30, 2004; the funds had to be returned to subscribers if Connors had not consummated the Transaction by that date.

On April 30, 2004, the United States and Defendants reached an agreement by which: the United States agreed not to file suit at that time to enjoin the Transaction; the Defendants signed a Hold Separate Stipulation and Order and a proposed Final Judgment, which included remedies that would restore the competition that the United States' preliminary analysis indicated would be lost through the combination of the Connors and Bumble Bee sardine businesses; and the United States agreed to defer filing the executed Hold Separate and proposed Final Judgment until it completed a thorough investigation into the likely competitive effects of the Transaction. At the completion of this investigation, the United States confirmed that it was likely that the transaction as originally proposed would harm competition for the sale of sardine snacks in the United States, but decided to narrow the scope of the original Final Judgment to eliminate certain remedies that it had subsequently determined were not needed to restore competition in the relevant antitrust market.

Accordingly, on August 31, 2004, the United States filed a Complaint alleging the likely effect of the Transaction, as originally proposed, would be to lessen competition substantially for the sale of sardine snacks throughout the United States in violation of Section 7 of the Clayton Act. This loss of competition would result in U.S. consumers paying higher prices for sardine snacks. At the same time, the United States also filed the Hold Separate Stipulation and Order and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition.

The proposed Final Judgment, which is explained more fully below, requires Connors to divest its Port Clyde brand, several smaller brands (Commander, Possum, Bulldog, Admiral and Neptune), and related assets that an acquirer of those brands might need in order to become a viable and active competitor in the sale of sardine snacks throughout the United States. Under the terms of the Hold Separate Stipulation and Order, Connors must maintain the commercial value of the Port Clyde brand until it is divested to an acquirer acceptable to the United States.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to

construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Connors marketed the first, second and fourth largest selling brands of sardine snacks in the United States (Brunswick, Beach Cliff, and Port Clyde, respectively) before this Transaction. In 2003, Connors brands accounted for approximately 63% of the sardine snack sales in the United States; and it earned revenues of about $43 million from the sale of these products.

Bumble Bee, a Delaware limited liability corporation with its headquarters in San Diego, California, marketed the third largest selling brand of sardine snacks in the United States before the Transaction. In 2003, its Bumble Bee brand accounted for approximately 13% of U.S. sardine snack sales; and it earned about $9 million from the sale of these products.

The Transaction, as initially proposed by Defendants, would lessen competition substantially as a result of Connors' acquisition of Bumble Bee's sardine snack business. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on August 31, 2004.

B. The Competitive Effects of the Transaction on Consumers of Sardine Snacks

The Complaint alleges that the relevant product market is sardine snacks, which is an ''overlap'' product, because Connors and Bumble Bee sell competing sardine snack products in the United States. Several characteristics distinguish sardine snacks (also called ''mainstream'' sardines in the industry) from other sardine products. Typically, sardine snacks are made from herring and other varieties of small fish, which are caught off the coasts of the United States (primarily Maine), Canada, Poland, Morocco, South America and Thailand, processed in those countries, and sold in the United States. Sardine snacks, as the name implies, are sold primarily as snacks; and they are packed in snack-size cans (primarily 3.75 ounce ''dingley'' cans or 4.4 ounce ''club'' cans). In the United States, the average retail price of sardine snacks is about $.21 per ounce.

Evidence gathered in the course of the United States' investigation indicated that a sardine product called ''premium'' sardines in the industry is not in the same product market as sardine snacks. Premium sardines typically consist of the brisling species of fish, which are caught off the coasts of Norway and Scotland, processed in those countries, and imported into the United States (and other countries). In the United States, the average retail price of premium sardines is about $.52 per ounce.

The evidence also showed that a sardine product called ''ethnic'' sardines in the industry is not in the same product market as sardine snacks. Typically, these sardines are marketed to specific ethnic groups, consumed as main courses rather than as snacks, and packed in meal-size cans (primarily 15 ounce ''oval'' cans). They typically consist of larger herring and other species that are perceived to be of a lower quality than the herring used for sardine snacks, and sell for an average of about $.08 per ounce (or about 40% of the price of sardine snacks). In addition, grocery stores often display these sardines exclusively in the ethnic section of their stores, rather than the canned seafood section (*e.g.,* Perla Pacifica might be displayed next to other Hispanic food products, several aisles away from Connors and Bumble Bee sardine snacks).

Connors and Bumble Bee sell sardine snacks throughout the United States. A small, but significant, increase in the price of sardine snacks would not cause a sufficient number of purchasers to switch to sardine snack brands not presently marketed in the United States to make the increase unprofitable. The United States, therefore, concluded that the appropriate geographic market for the purpose of analyzing the competitive effects of the Transaction is no larger than the United States, and that the United States is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

Even before Connors acquired Bumble Bee, the U.S. sardine snack market was highly concentrated. Connors brands accounted for approximately 63% of the sales in this market, while Bumble Bee's sardine brand held about a 13% share. The remaining share is accounted for by brands with small individual market shares that can be described as ''fringe'' players. Using a measure of concentration called the Herfindahl-Hirschman Index (''HHI''), which is defined and explained in Exhibit A to the Complaint, the pre-transaction HHI was about 4200—well in excess of the 1800 point level for characterizing markets as highly concentrated.

The Transaction resulted in Connors' main rival exiting the sardine snack market and a substantial increase in concentration in an already concentrated market. Post-transaction, the combined Connors/Bumble Bee firm would account for over 75% of the market; and none of its remaining competitors would have as much as a 5% share of the remaining sales. The Transaction would increase the HHI by about 1600 points—well in excess of levels that raise significant antitrust concerns.

In fact, as the Complaint alleges, it is likely that the elimination of Bumble Bee as an independent competitor would give the combined Connors/Bumble Bee firm unilateral power to profitably raise prices, whether or not the remaining fringe players responded by raising their prices. For example, the combined firm could raise the price of the Bumble Bee brand of sardine snacks with little concern that it would lose sufficient sales to make the Bumble Bee price increase unprofitable.

The evidence gathered during the investigation also indicated that entry into the sale of sardine snacks in the United States would not be timely, likely, or sufficient to deter any exercise of market power by the combined Connors/Bumble Bee entity. Brand recognition is an important factor in the marketing and sale of sardine snacks in the United States, and consumers of sardine snacks generally restrict their purchases to brands they know and trust. New entry would require years of effort and the investment of substantial sunk costs, including promotion expenditures and slotting allowances (in many grocery chains), to create brand awareness among consumers. Likewise, the investigation showed that these same barriers would make it difficult for existing fringe players or regional sellers of sardine snacks to expand to the level required to make up for the loss of a competitor of Bumble Bee's significance.

III. Explanation of the Proposed Final Judgment

The devestiture required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in sardine snack products by establishing a new, independent, and economically viable competitor with several recognized brand names in the sardine snack market. The purchaser will acquire several sardine snack brands. Moreover, the acquirer may sell other canned seafood products under its brand names (as do Connors, Bumble Bee and other sellers of sardine snacks)—as Connors will transfer all of its rights to produce, distribute and sell seafood products under the divested brands (with the limited exception of

clam products, which Connors may continue to sell under the Neptune brand.) For example, the acquirer will obtain the right to sell kippered herring snacks, which a firm with a sardine snack processing plant can easily produce at its plant, in addition to sardine stacks. The divestiture also includes a packing plant, inventories, and the other tangible and intengible assets that an acquirer might need to produce, distribute and sell sardine snacks under the divested brand names in the United States.

Port Clyde is the fourth largest brand of sardine snacks, and Commander is in the top ten. The remaining brands to be divested (Possum, Bulldog, Admiral and Neptune) have relatively small national market shares, but each is a significant seller in one or more regions. In the aggregate, the divested Connors brands accounted for approximately 14% of U.S. sardine snack sales in the United States in 2003, as compared to about a 13% market share for the Bumble Bee brand.

The proposed divesture, therefore, will re-establish the competitive constraint that the Transaction would have removed from the U.S. sardine snack market. Within one hundred and twenty calendar days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, Connors must transfer the divested brands, and related assets, in a way that satisfies the United States, in its sole discretion, that the operations can and will be operated by the purchaser as a viable, ongoing and competitive business. In exercising its discretion, the United States will ensure that the assets are transferred to an acquirer who has the incentive and opportunity to compete as effectively in the sardine snack business as did Bumble Bee.

Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers. In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture, and the defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective; the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture.

At the end of three months after the trustee's appointment, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect it any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy, & Agriculture Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW.; Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendants. The United States could have entered into litigation and sought an injunction against the combination of Connors and Bumble Bee's sardine snack business. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of sardine snacks in the United States.

The United States also considered requiring the Defendants to grant a long-term, but finite, license allowing an acquirer to use the Bumble Bee brand name for sardine snacks while it transitioned the product to its own brand name, but rejected this in favor of a clean structural remedy.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship

between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24, 598 (1973) (statement of Senator Tunney).[1] Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that would best serve society, but whether the settlements is ''*within the reaches of the public interest*.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added)(citations omitted).[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A]'' proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'' *United States* v. *AT&T*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted)(quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985)(approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by brining a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 19, 2004.

Respectfully submitted,
Robert L. McGeorge, DC Bar #91900.
U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 325 7th Street, NW; Suite 500, Washington, DC 20530.

Certificate of Service

I hereby certify that on October 19, 2004, I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendants by electronic mail and first class mail, postage prepaid:

Counsel for Defendants Connors Bros. Income Fund and Bumble Bee Seafoods, LLC:

David Beddows, Esq.,
Richard G. Parker, Esq.
O'Melveny & Myers LLP, 1625 Eye Street, NW., Washington, DC 2006.

Michelle Livingston, Member of the DC Bar, #461268.
U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530; (202) 353–7328, (202) 307–2784 (Fax).

Final Judgment

Whereas, plaintiff, United States of America, and defendants, Connors Bros. Income Fund and Bumble Bee Seafoods, LLC, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree that venue and jurisdiction are proper in this Court;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Divestiture Assets by defendants to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

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[1] *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), *reprinted* in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *Cf. BNS,* 858 F.2d at 463 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' menas the entity to whom defendants or the trustee divest the Divestiture Assets.

B. ''Bumble Bee'' means defendant Bumble Bee Seafoods, LLC, a Delaware limited liability corporation with its headquarters in San Diego, California, its successors and assigns, and its subsidiaries, divisions groups, partnerships and joint ventures, and their directors, officers, mangers, agents, and employees.

C. ''Connors'' means defendant Connors Bros. Income Fund, a Canadian income trust with its headquarters in Blacks Harbour, New Brunswick, Canada, its successors and assigns, and its subsidiaries, divisions, groups, partnerships and joint ventures, and their directors, officers, mangers, agents, and employees.

D. ''Label'' means all legal rights owned or possessed by the defendants pertaining to a brand's trademarks, trade names, service names, service marks, copyrights, designs, and trade dress associated with the goods and services sold under a brand name.

E. ''Divestiture Assets'' include:

1. The Port Clyde, Commander, Bulldog, Neptune, Admiral, and Possum Labels, except the Neptune Label for clam products;

2. All existing inventories of sardines, kippered herring snacks, and other canned seafood products sold under the Port Clyde, Commander, Bulldog, Neptune, Admiral, and Possum Labels;

3. All existing inventories of cans and wrappings for sardines, kippered herring snacks, and other canned seafood products that are marked with Port Clyde, Commander, Bulldog, Neptune, Admiral, and Possum Labels;

4. At the Acquirer's option, no more than one of the following Connors processing assets:

a. The Bath plant located at 101 Bowery Street, Bath, Maine 04530; including all rights, titles and interests in any tangible assets (*e.g.* land, buildings, docking and unloading facilities, warehouses, other real property and improvements, fixtures, machinery, equipment, tooling, fixed assets, personal property, and office furniture), relating to Connors canned seafood business, including all fee and leasehold and renewal rights in such assets or any options to purchase any adjoining property; or

b. The Grand Manan plant located in New Brunswick, Canada at Seal Cove, Grand Manan, New Brunswick EOG 3BO; including all rights, titles and interests in any tangible assets (*e.g.*, land, buildings, docking and unloading facilities, warehouses, other real property and improvements, fixtures, machinery, equipment, tooling, fixed assets, personal property, and office furniture), relating to Connors canned seafood business, including all fee and leasehold and renewal rights in such assets or any options to purchase any adjoining property;

5. All additional tangible and intangible assets that are used in manufacturing, distributing, marketing and selling sardines, kippered herring snacks, and other canned seafood products sold under the Port Clyde, Commander, Bulldog, Neptune, Admiral, and Possum Labels, including research and development activities and equipment; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings; marketing studies, promotion plans, advertising materials; packaging, marketing and distribution know-how and documentation, such as route maps; inventory, delivery and storage vehicles, storage and warehouse facilities and agreements; customer lists, contracts accounts, credit records, and agreements; supplier lists and agreements; repair and performance records, and all other records; and

6. All additional intangible assets that are used in manufacturing, distributing, marketing, and selling sardines, kippered herring snacks, and other canned seafood products sold under the Port Clyde, Commander, Bulldog, Neptune, Admiral, and Possum labels, including those used in developing, producing, and servicing such products, including, but not limited to all patents, licenses, and sublicenses, intellectual property, copyrights; grand technical information and production know-how, including but not limited to, recipes and formulas and any improvements to, or line extensions thereof; and computer software and related documentation; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; safety procedures for the handling of materials and substances; all research data concerning historic and current research and development; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

III. Applicability

A. This Final Judgment applies to defendants Connors and Bumble Bee, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Jugment by personal service or otherwise.

B. If the defendants sell or otherwise dispose of all of their assets, or lesser business units that include the Divestiture Assets, they shall require that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendands need not obtain such an agreement from the Acquirer.

IV. Divestitures

A. Defendants are ordered and directed, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, which collectively shall not exceed sixty (60) days in total, and shall notify the Court in such circumstances. Defendants shall use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents

subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the prospective Acquirers and the United States information relating to the personnel involved in the operation and management of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant's employee whose primary responsibility is the operation and management of the Divestiture Assets.

D. Defendants shall permit prospective Acquirers to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets, access to any and all environmental, zoning, and other permit documents and information relating to the Divestiture Assets, and access to any and all financial, operational, strategic or other documents and information relating to the Divestiture Assets customarily provided as part of a due diligence process.

E. Defendants shall warrant to all prospective Acquirers that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Defendants will not introduce or sell any canned seafood products under the Labels contained in the Divestiture Assets; however, defendants may continue to introduce and sell clam products under the Neptune Label.

H. Defendants shall warrant to the Acquirer of the Divestiture Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, shall be sold to a single Acquirer, and shall be accomplished in such a way as to satisfy the Untied States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business of the sale of canned sardines.

J. The divestitures, whether pursuant to Section IV or Section VI of this Final Judgment,

1. Shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of packing and producing (unless otherwise acquired), marketing, distributing, and selling canned sardine products; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within three (3) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports

shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within (15) calendar days of the receipt of the request, unless the parties otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, shall describe in detail each contact with any such person during that period, and shall describe in detail which of the Divestiture Assets each such person made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy, or at the United States' option, to require defendants to provide copies of, all books, ledgers, accounts, records, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the antitrust Division, defendants shall submit written reports or interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants

represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedures, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure, then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets from the Acquirer, or their successors, during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against defendants Connors Bros. Income Fund (''Connors'') and Bumble Bee Seafoods, LLC (''Bumble Bee''), and complains and alleges as follows:

1. The United States brings this suit to prevent Connors from retaining a newly acquired near monopoly in sardine snack foods. On April 30, 2004, Connors consummated its acquisition of Bumble Bee. At the time of the transaction, Connors and Bumble Bee were the only two significant sellers of sardine snacks in the United States.

2. Unless remedied, the acquisition will eliminate substantial head-to-head rivalry between Connors and Bumble Bee. Consequently, the elimination of Bumble Bee as an independent significant competitor will substantially lessen competition for the sale of sardine snacks and result in higher prices to United States consumers. The acquisition, therefore, violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

I. Jurisdiction and Venue

3. This Complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, in order to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

4. Connors and Bumble Bee sell sardine snacks in the flow of U.S. interstate commerce. Defendant's activities in producing and marketing that product also substantially affect interstate commerce. The Court has subject matter jurisdiction over this action, 28 U.S.C. 1331, 1337(a) and 1345.

5. The defendants have consented to personal jurisdiction and venue in this judicial district.

II. The Defendants

6. Connors Bros. Income Fund is a Canadian income trust with its headquarters in Blacks Harbour, New Brunswick, Canada.

7. Even before its acquisition of Bumble Bee, Connors was the largest canned sardine company in the United States. It also sold other canned seafood products such as kippered herring snacks, fish steaks, shrimp, anchovies and oysters, as well as fish meal and fish oil. Connors operates four canning and processing facilities, two in Maine and two in New Brunswick, Canada. It sells three of the top four sardine snack brands in the United States—Beach Cliff, Brunswick, and Port Clyde; and its total sales of sardine snacks exceed $43 million in 2003.

8. Bumble Bee Seafoods, LLC, is a Delaware limited liability corporation with its headquarters in San Diego, California. Bumble Bee became a wholly owned corporate subsidiary of Connors after Connors acquired it on April 30, 2004. Prior to its acquisition by Connors, Bumble Bee was a leading seller of canned seafood products. The Bumble Bee brand of sardine snacks was the third largest selling brand in the United States. In addition, Bumble Bee is one of the three largest sellers of tuna in the United States, and is a leading seller of other canned seafood products, such as premium sardines, salmon, mackerel and scallops. Bumble Bee reported U.S. sardine snack sales of approximately $9 million in 2003.

III. Background

9. Canned sardines are a processed fish product ready for immediate consumption by consumers. Sardine companies sell an array of canned sardine products, varying the fish, packaging, prices, and marketing.

10. Sardine snacks, sometimes referred to as ''mainstream'' sardines in the industry, are the principal sardine product in the United States, with revenue and unit volumes far in excess of any other sardine product. They typically consist of herring and other small varieties of fish that are caught off the coasts of the United States (primarily Maine), Canada, Poland, Morocco, Thailand and South America, and processed in those countries. They are consumed primarily as snacks and packed in snack-size 3.75 ounce and 4.4 ounce cans.

11. Other sardine products include premium and ethic sardines. Premium sardines typically consist of brislings that are caught off the costs of Norway and Scotland, and processed in those countries. They sell for about two and a half times as much as sardine snacks. Ethnic sardines typically consist of pilchards and lower quality herring. They are generally consumed as main courses, packed in 15 ounce cans, sell for less than half the price of sardine snacks, are marketed primarily to members of specific ethnic groups, and are often displayed exclusively in ethnic sections of grocery stores.

12. Brand recognition is an important factor in the marketing and sales of sardine snacks in the United States. Brands are generally used to distinguish different sardine products (*i.e.,* sardine snacks, premium sardines and ethnic sardines), and to distinguish the different sellers who compete to sell each of those products. Consumers of sardine snacks generally will restrict their purchases to brands that they know and trust.

IV. Trade and Commerce

A. Relevant Product and Geographic Market

13. A small but significant increase in the price of sardine snacks would not cause enough consumers to switch to other products (including premium and ethnic sardines) to make such a price increase unprofitable. Accordingly, the sale of sardine snacks is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

14. Both Connors and Bumble Bee sell sardine snacks throughout the United States. A small but significant price increase in sardine snacks would not

cause a sufficient number of purchasers to switch to sardine snack brands not presently marketed in the United States to make the increase unprofitable. The relevant geographic market, therefore, within the meaning of Section 7 of the Clayton Act is no larger than the United States.

B. Anticompetitive Effects

15. The sardine snack market is highly concentrated, and the defendants are, by far, the largest sellers of those products in the United States. Connors and Bumble Bee both sell well established sardine brands. Brand recognition is important to consumers of sardines, and the transaction has combined the two owners of the four most successful sardine snack brands in the United States (Connors' Brunswick, Beach Cliff and Port Clyde brands, and Bumble Bee). Connors accounts for an approximately 63 percent market share and Bumble Bee's share is approximately 13 percent. Together, the two firms account for more than 75 percent of United States sales of sardine snacks, and the remaining sales are widely dispersed among numerous firms with small individual market shares.

16. The acquisition of Bumble Bee by Connors would substantially increase concentration and lessen competition in the United States sardine snack market. Using a measure of concentration called the Herfindahl-Hirschman Index (''HHI''), defined and explained in Exhibit A, combining Connors and Bumble Bee would substantially increase the already high concentration in the market. The combination would increase the HHI from about 4200 to more than 5800, well in excess of levels that raise significant antitrust concerns.

17. The acquisition of Bumble Bee by Connors gives Connors the power profitably to increase prices unilaterally for one or more of its brands of sardine snacks, to the detriment of consumers.

C. Entry and Expansion

18. It is difficult to enter into the sale of sardine snacks in the United States, or to significantly expand sales of smaller brands. New entry or expansion requires years of effort and the investment of substantial sunk costs, including promotional expenditures and slotting allowances (for sales through grocery stores) to create brand awareness among consumers. Therefore, new entry or expansion would not be timely, likely or sufficient to thwart the anticompetitive effects of the acquisition.

V. Violation Alleged

19. The effect of Connors' acquisition of Bumble Bee may be to substantially lessen competitive and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

20 The combination will likely have the following effects, among others:

a. Competition generally in the sale of sardine snacks in the United States would be substantially lessened;

b. Actual and potential competition between Connors and Bumble Bee in the sale of sardine snacks in the United States would be eliminated; and

c. Prices for sardine snacks sold in the United States likely would increase.

21. Unless restrained, the acquisition will violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

VI. Requested Relief

Plaintiff requests:

1. That Connors' acquisition of Bumble Bee be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18;

2. That Connors be ordered to divest Bumble Bee, and defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out any agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of the defendants;

3. That plaintiff be awarded its costs of this action; and

4. That plaintiff receive such other and further relief as the case requires and the Court deems proper.

Dated: August 31, 2004.

Respectfully submitted,

R. Hewitt Pate, D.C. Bar #473598;

Assistant Attorney General.

J. Bruce McDonald

Deputy Assistant Attorney General.

J. Robert Kramer, II, Pa. Bar #23963,

Director of Operations and Civil Enforcement.

Roger W. Fones, DC Bar #303255,

Chief, Transportation, Energy and Agriculture Section.

Donna Kooperstein,

Assistant Chief, Transportation, Energy and Agriculture Section.

Robert L. McGeorge, DC Bar #91900.

Michelle J. Livingston.

Hillary L. Snyder,

Trial Attorneys, United States Department of Justice, Antitrust Division, Transportation, Energy and Agriculture Section, 325 7th Street, NW.; Suite 500, Washington, DC 20530. Telephone: (202) 307–6351. Facsimile (202) 307–2784.

Exhibit A—Definition of ''HHI''

The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

[FR Doc. 04–24902 Filed 11–8–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Program Year (PY) 2005 Workforce Information Core Products and Services Grants Planning Guidance

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections

of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. PRA95 helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before January 10, 2004.

ADDRESSES: Send comments to Mr. Anthony Dais, Chief, Division of USES/ALMIS, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Ave., NW., Rm. S–4231, Washington, DC 20210, 202–693–2784 (this is not a toll-free number) or *dais.anthony@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Olaf Bjorklund, Division of USES/ALMIS, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Ave., NW., Rm. S–4231, Washington, DC 20210, 202–693–2870 (this is not a toll-free number) or *bjorklund.olaf@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration (ETA) published a planning guidance for PY 2004 Workforce Information Core Products and Services grants to states in Training and Employment Guidance Letter (TEGL) 1–04, on July 2, 2004. The Office of Management and Budget (OMB) has reviewed and granted a temporary approval of the Information Collection Request for TEGL 1–04 (OMB Control Number 1205–0417). The approval expires February 28, 2005. ETA is requesting that the information collection requirements specified in TEGL 1–04 be continued as a regular OMB approval for three years. This **Federal Register** notice is requesting public comments and recommendations regarding the continuance of the information collection.

The collection from each grantee includes:

(a) Submission of an annual plan narrative signed by both the Administrator of the State Workforce Agency (SWA) and the Chair of the State Workforce Investment Board (SWIB), or by the Governor if the SWA and SWIB cannot agree on grant deliverables.

(b) A documented assessment of customer satisfaction with the information products and services provided with the grant funds.

(c) Submission of an annual performance report signed by both the administrator of the SWA and chair of the SWIB, or by the Governor.

II. Desired Focus of Comments

Comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed collection can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Type of Review: Continuing.

Agency: Employment and Training Administration.

Title: PY 2004 Workforce Information Core Products and Services grants.

OMB Number: 1205–0417.

Affected Public: States.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: November 3, 2004.

Gay M. Gilbert,

Administrator, Office of Workforce Investment.

[FR Doc. E4–3078 Filed 11–8–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Hoist Operators Physical Fitness

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before January 10, 2005.

ADDRESSES: Send comments to Melissa Stoehr, Acting Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via e-mail to *stoehr.melissa@dol.gov.* Ms. Stoehr can be reached at (202) 693–9837 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Title 30 CFR 56.19057 and 57.19057 require the annual examination and certification of a hoist operator's fitness. The safety of all metal and nonmetallic miners riding hoist conveyances is dependent upon the attentiveness and physical capabilities of the hoist operator, in routine and emergency evacuations. Improper movement, overspeed, and overtravel of a hoisting conveyance can result in serious physical harm or death to all passengers. While small mine operators are likely to have fewer hoists and hoist operators, Congress intended that the Mine Act be enforced at all mining operations within its jurisdiction regardless of size and that information collection and record keeping requirements be consistent with efficient and effective enforcement of the Mine Act. However, Congress did

recognize that small operations may face problems in complying with some Mine Act provisions. Section 103(e) of the Mine Act directs the Secretary of Labor not to impose an unreasonable burden on small businesses when obtaining any information under the Mine Act. This information collection does not have a significant impact on a substantial number of small entities.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the Hoist Operators' Physical Fitness. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.*, permitting electronic submissions of responses) to minimize the burden of the collection of information on those who are to respond.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

Title 30 CFR Sections 56.19057 and 57.19057 require the annual examination and certification of a hoist operator's fitness. The safety of all metal and nonmetallic miners riding hoist conveyances is dependent upon the attentiveness and physical capabilities of the hoist operators, in routine and emergency evacuations. Improper movements, overspeed, and overtravel of a hoisting conveyance can result in serious physical harm or death to all passengers. Small mine operators are likely to have fewer hoists and hoist operators.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Hoist Operator's Physical Fitness.

OMB Number: 1219–0049.

Affected Public: Business or other for-profit.

Frequency: Annually.

Recordkeeping: At least one year from the time that certification is obtained.

Total Respondents: 58.

Total Responses: 290.

Average Time per Response: .0333 hours.

Estimated Total Burden Hours: 9.7.

Total Annualized Capital/Startup Costs: $0.

Total Operating and Maintenance Costs: $89,320.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated in Arlington, Virginia, this 22nd day of October 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–24899 Filed 11–8–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Records of Tests and Examinations of Personnel Hoisting Equipment

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before January 10, 2005.

ADDRESSES: Send comments to Melissa Stoehr, Acting Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via e-mail to *stoehr.melissa@dol.gov.* Ms. Stoehr can be reached at (202) 693–9837 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

These requirements provide for a record of specific test and inspections of a mine's personnel hoisting systems, including the wire rope, to ensure that the system remains safe to operate. Review of the record indicates whether deficiencies are developing in the equipment, in particular the wire rope, so that corrective action may be taken before an accident occurs. The requirements also provide for a systematic procedure for the inspection, testing, and maintenance of shaft and hoisting equipment. The mine operator must certify that the required inspections, tests, and maintenance have been made then record any unsafe condition identified during the examination or test.

The precise format in which the record is kept is left to the discretion of the mine operator. All records are made by the person conducting the required examination or test. Unless otherwise noted below, these records are to be retained for one year at the mine site.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to Records of Tests and Examinations of Personnel Hoisting Equipment. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.*, permitting electronic submissions of responses) to minimize

the burden of the collection of information on those who are to respond.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

The information is used by industry management and maintenance personnel to project the expected safe service performance of hoist and shaft equipment; to indicate when maintenance and specific tests need to be performed; and to ensure that wire rope attached to the personnel conveyance is replaced in time to maintain the necessary safety for miners. Federal inspectors use the records to ensure that inspections are conducted, unsafe conditions identified early and corrected. The consequence of hoist or shaft equipment malfunctions or wire rope failures can result in serious injuries and fatalities. It is essential that MSHA inspectors be able to verify that mine operators are properly inspecting their hoist and shaft equipment and maintaining it in safe condition.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Record of Tests and Examinations of Personnel Hoisting Equipment.

OMB Number: 1219–0034.

Affected Public: Business or other for-profit.

Frequency: Daily, Bi-weekly, Bi-monthly, Semi-annually, On occasion.

Recordkeeping: One year.

Number of Respondents: 249.

Number of Responses: 252,484.

Estimated Time per Response: .27 hours.

Total Burden Hours: 67,698.

Total Annualized Capital/Startup Costs: $0.

Total Operating and Maintenance Costs: $298,800.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated in Arlington, Virginia, this 22nd day of October 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–24900 Filed 11–8–04; 8:45 am]

BILLING CODE 4510–43–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 04–12]

Public Outreach Meeting

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: The Millennium Challenge Corporation (''MCC'') will hold a public outreach meeting on Wednesday, November 10, 2004 at the U.S. Department of State in Washington, DC. The MCC Chairman, CEO and MCC staff will update interested members of the public regarding the MCC Board's selection of Millennium Challenge Account eligible countries for Fiscal Year 2005.

DATES: Wednesday, November 10, 2004; from 1–2 p.m.

ADDRESSES: U.S. Department of State, Dean Acheson Auditorium (Enter through 23rd Street, NW., Entrance between C and D Streets), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Cassandra Jastrow at (202) 521–3600.

SUPPLEMENTARY INFORMATION: Due to security requirements at the meeting location, all individuals wishing to attend the meeting are encouraged to arrive at least 20 minutes before the meeting begins and must comply with all relevant security requirements of the U.S. Department of State. Those wishing to attend should e-mail Cassandra Jastrow at *events@mcc.gov* with the following information: Name, Telephone Number, e-mail address; Affiliation/Company Name, Social Security Number and Date of Birth. Seating will be available on a first come, first served basis.

Dated: November 5, 2004.

Frances C. McNaught,

Vice President, Domestic Relations, Millennium Challenge Corporation.

[FR Doc. 04–25060 Filed 11–5–04; 12:04 pm]

BILLING CODE 9210–01–U

THE NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection, Submission for OMB Review, Comment Request

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of requests for information collection.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this proposed information collection request, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Research and Technology, Rebecca Danvers at (202) 606–2478. Individual who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636. The Institute of Museum and Library Services is seeking clearance for a collection of application information for two grant programs: 21st Century Museum Professionals and Native American/Native Hawaiian Museum Services.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 9, 2004.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

ADDRESSES: Send comments to: Rebecca Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 223, Washington, DC 20506. Dr. Danvers can be reached on

telephone: 202–606–2478 fax: 202–606–0395 or by e-mail at *rdanvers@imls.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, 20 U.S.C. 9101, *et seq.* The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. The Museum and Library Services Act, 20 U.S.C. 9101, *et seq.* authorizes the Director of the Institute of Museum and Library Services to make grants to museums and other entities as the Director considers appropriate, and to Indian tribes and to organizations that primarily serve and represent Native Hawaiians.

I. The Institute of Museum and Library Services published an initial Notice for Requests for Information Collection in the 68 FR 42782, July 16, 2004. In response to this initial 60-day comment period, the agency received a few questions and takes this opportunity to clarify the eligibility requirements for the Native American/Native Hawaiian Museum Services grant program. IMLS's authorizing legislation requires the Director of the agency to award financial assistance under this program to eligible Native American tribes that are ''recognized by the Secretary of the Interior as eligible for special programs and services provided by the United States to Indians because of their status as Indians,'' as well as organizations that primarily serve and represent Native Hawaiians. *See* 20 U.S.C. 9101(4) and 9173(d). Museums with 501(c)3 status under the Internal Revenue Code, that are located within tribes or within the U.S., U.S. territories, or Freely-Associated States, are not eligible to apply directly to this program, but may partner with an eligible tribe or organization. In addition, museums are eligible for other IMLS grant programs, as described in the agency's program guide located at *http://www.imls.gov.*

The Institute of Museum and Library Services also received a small number of comments regarding the agency's guidelines for the 21st Century Museum Professionals grant program. Most responses related to the scope of professional development activities contemplated by the program. Responders suggested specific areas that could be funded through the program (*e.g.*, financial management and scholarly research on collections). IMLS has clarified sections of the guidelines that seem to have caused confusion and misunderstanding as to the scope of the program.

II. Current Actions

To administer these programs of grants, cooperative agreements and contracts, IMLS must develop application guidelines, reports and customer service surveys.

Agency: Institute of Museum and Library Services.

Title: Application Guidelines.

OMB Number: n/a.

Agency Number: 3137.

Frequency: Annually.

Affected Public: Museums, museum organizations, Indian tribes and to organizations that primarily serve and represent Native Hawaiians.

Number of Respondents: 150.

Estimated Time Per Respondent: 10–35 hours.

Total Burden Hours: 2750.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs: 0.

CONTACT: Rebecca Danvers, Director of the Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–2478.

Dated: November 3, 2004.

Rebecca Danvers,

Director, Office of Research and Technology.

[FR Doc. 04–24894 Filed 11–8–04; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that eight meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Museums (Access to Artistic Excellence): November 30–December 2, 2004, Room 716. This meeting, from 9 a.m. to 5:30 p.m. on November 30th, from 9 a.m. to 6 p.m. on December 1st, and from 9 a.m. to 3 p.m. on December 2nd, will be closed.

Theater/Musical Theater (Access to Artistic Excellence, Panel B): December 1–2, 2004, Room 730. A portion of this meeting, from 2:30 p.m. to 3:30 p.m. on December 2nd, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 6 p.m. on December 1st, and from 9 a.m. to 2:30 p.m. and from 3:30 p.m. to 5 p.m. on December 2nd, will be closed.

Arts Education (Learning in the Arts for Children & Youth, Panel B3): December 2–3, 2004, Room 714. A portion of this meeting, from 3:45 p.m. to 4:15 p.m. on December 3rd, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 6 p.m. on December 2nd, and from 9 a.m. to 3:45 p.m. and 4:15 p.m. to 4:45 p.m. on December 3rd, will be closed.

Multidisciplinary (Access to Artistic Excellence): December 7–10, 2004, Room 716. A portion of this meeting, from 3 p.m. to 4 p.m. on December 10th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on December 7th–9th, and from 9 a.m. to 3 p.m. and 4 p.m. to 4:50 p.m. on December 10th, will be closed.

Literature (Access to Artistic Excellence): December 8–10, 2004, Room 714. A portion of this meeting, from 11 a.m. to 12 p.m. on December 10th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 6 p.m. on December 8th and December 9th, and from 9 a.m. to 11 a.m. and 12 p.m. to 3 p.m. on December 10th, will be closed.

Arts Education (Learning in the Arts for Children & Youth, Panel D2): December 13, 2004, Room 716. A portion of this meeting, from 4:30 p.m. to 5 p.m., will be for policy discussion and will be open to the public. The remainder of the meeting, from 8:30 a.m. to 4:30 p.m. and 5 p.m. to 5:30 p.m., will be closed.

Arts Education (Learning in the Arts for Children & Youth, Panel D3): December 14–16, 2004, Room 716. A portion of this meeting, from 3 p.m. to 4 p.m. on December 15th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on December 14th and 16th, and from 9 a.m. to 3 p.m. and 4 p.m. to 5:30 p.m. on December 15th, will be closed.

Arts Education (Learning in the Arts for Children & Youth, Panel D4): December 17, 2004, Room 716. A portion of this meeting, from 4:30 p.m. to 5 p.m., will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 4:30 p.m. and 5 p.m. to 5:30 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and

recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 14, 2004, these sessions will be closed to the public pursuant to subsection (c)(6) of 5 U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: November 3, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–24908 Filed 11–8–04; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

AmerGen Energy Company, LLC; Oyster Creek Nuclear Generating Station; Exemption

1.0 Background

AmerGen Energy Company, LLC (the licensee), is the holder of Facility Operating License No. DPR–16, which authorizes operation of the Oyster Creek Nuclear Generating Station (OCNGS).

The facility consists of a boiling-water reactor (BWR), located in Ocean County, New Jersey. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix J, Option B, Section III.B., ''Type B and C Tests,'' states, in part, that containment leakage tests must demonstrate that the sum of the leakage rates at accident pressure of Type B tests, and pathway leakage rates from Type C tests, is less than the performance criterion (L_a) with margin as specified in the Technical Specifications (TSs). In this context, ''accident pressure,'' P_a, was previously analyzed to be 35 psig at OCNGS. Accordingly, for main steam isolation valves (MSIVs), leakage rate testing is to be done at this peak containment calculated pressure, *i.e.*, 35 psig.

By letter dated December 23, 2003, the licensee requested a permanent exemption from the requirements of the subject provision of Appendix J, such that the MSIVs may be tested at lower pressures but not lower than 20 psig. By separate application also dated December 23, 2003, the licensee proposed to revise the OCNGS TSs, Section 4.5.D, to specify the lower test pressure and leakage rate; the NRC staff will communicate the results of its review of this proposed license amendment by separate correspondence.

In summary, in order for the NRC staff to approve the lower leakage rate test pressure for the TSs, the licensee first needs an exemption from the subject regulation.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include situations where the regulation would not serve the underlying purpose of the rule.

OCNGS has two main steam lines, each having two MSIVs. The MSIVs are 24-inch angled globe valves of ''Y'' configuration. The cup-shaped poppet moves on a centerline that is 45 degrees upward from the horizontal centerline of the piping run. Each MSIV is oriented to provide effective sealing in the direction of post-accident containment atmosphere leakage, *i.e.*, the forward direction, as compared to the between-the-valve Type C test which tends to unseat the inboard valve. The design of the steam lines is such that the preferred method of Type C testing is through the use of a between-the-valves test tap. Periodic Type C testing verifies that the leakage assumed in the radiological analysis is not exceeded. The licensee is requesting this exemption and associated amendment to the TSs in order to reduce the probability of lifting the inboard MSIVs during testing. Testing of the two MSIVs simultaneously at P_a, by pressurizing between the valves tends to lift the disc of the inboard valve. This results in test results which may not accurately reflect the isolation capabilities of the MSIVs. Therefore, testing the two MSIVs simultaneously at P_a does not serve the underlying purpose of the rule.

In conjunction with the proposed exemption, the licensee proposed an amendment to the TSs, specifying testing at a minimum of 20 psig between the 2 MSIVs, and an acceptance pathway leakage rate of 11.9 standard cubic feet per hour. The proposed 20 psig pressure is greater than one-half of P_a, and the licensee stated that it would avoid lifting the disc of the inboard valve. As shown in the OCNGS Updated Final Safety Analysis Report, Figure 6.2–3, the primary containment pressure following a design-basis loss-of-coolant accident reaches its peak within 2 to 3 seconds, and rapidly drops below 20 psig. The NRC staff has previously approved testing of MSIVs at reduced pressure at many other BWR plants. Industry experience in testing these valves at a pressure in the range of 20 psig and with an acceptance criterion of approximately 11.9 standard cubic feet per hour has been shown to be effective in determining the condition of these valves.

The underlying purpose of the requirements of 10 CFR part 50, Appendix J, Option B, Section III.B is to demonstrate by periodic testing that the primary reactor containment will be able to perform its function of providing a leak-tight barrier against uncontrolled release of radioactivity to the environment. As stated above, the NRC staff examined the licensee's rationale to support the exemption and concluded that MSIV leakage testing at accident pressure does not serve the underlying purpose of the rule, and fulfillment of the proposed alternative testing criteria would demonstrate leak-tightness of the MSIVs. Thus, the underlying purpose of the subject regulation is achieved and served by the licensee's proposed criteria.

Based upon a consideration of the information submitted by the licensee, the NRC staff concludes that the licensee's proposed reduced test pressure for Type C testing of MSIVs is justified.

Therefore, the NRC staff concludes that pursuant to 10 CFR 50.12(a)(2), special circumstances are present in that application of the Appendix J

requirements does not serve the underlying purpose of the rule.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR part 50, Appendix J, Option B, Section III.B for OCNGS. Specifically, this permanent exemption permits the licensee to perform leakage testing of the MSIVs at reduced pressure, but not lower than 20 psig.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (69 FR 63562).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of November, 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–24888 Filed 11–8–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Extension of Public Comment Period: Louisiana Energy Services National Enrichment Facility

AGENCY: United States Nuclear Regulatory Commission (NRC).

ACTION: Extension of public comment period.

SUMMARY: The NRC is extending the public comment period for the Draft Environmental Impact Statement (DEIS) for the Proposed National Enrichment Facility in Lea County, New Mexico (NUREG–1790) that was to end on November 6, 2004. The original notice of availability of the DEIS appeared in the **Federal Register** on September 17, 2004 (69 FR 56104).

On October 25, 2004, the NRC initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's Web site. Interested members of the public should check the NRC's Web pages for updates on the availability of documents through the ADAMS system. This extension of the public comment period is appropriate to allow members of the public adequate opportunity to obtain access to relevant documents in ADAMS in order to comment on the DEIS. Therefore, the public comment period is being extended until December 18, 2004.

Members of the public are invited and encouraged to submit comments to the Chief, Rules Review and Directives Branch, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 70–3103 when submitting comments. Written comments submitted by mail should be postmarked by December 18, 2004, to ensure consideration. Comments mailed after that date will be considered to the extent practical.

Comments will also be accepted by e-mail to *nrcrep@nrc.gov,* or by facsimile to 301–415–5397, Attention: Anna Bradford.

FOR FURTHER INFORMATION CONTACT: For general or technical information associated with the license review of the National Enrichment Facility, please contact Timothy Johnson at (301) 415–7299. For general information on the NRC environmental review process, please contact Anna Bradford at (301) 415–5228.

Signed in Rockville, MD, this 2nd day of November, 2004.

For the Nuclear Regulatory Commission.

B. Jennifer Davis,

Chief, Environmental and Low-Level Waste Section, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–24889 Filed 11–8–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 8, 15, 22, 29, December 6, 13, 2004.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of November 8, 2004

Monday, November 8, 2004

9 a.m. Briefing on Plant Aging and Material Degradation Issues—Part One (Public Meeting) (Contact: Steve Koenick, 301–415–1239).

1:30 p.m. Briefing on Plant Aging and Material Degradation Issues—Part Two (Public Meeting) (Contact: Steve Koenick, 301–415–1239).

This meeting (both parts) will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, November 10, 2004

2:30 p.m. Affirmation Session (Public Meeting).

a. U.S. Department of Energy (High Level Waste Repository: Pre-Application Matters); DOE's appeal of LBP–04–20.

b. Exelon Generation Company, LLC (Clinton ESP Site), LBP–04–17 (August 6, 2004).

Week of November 15, 2004—Tentative

Tuesday, November 16, 2004

1:30 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).

Thursday, November 18, 2004

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of November 22, 2004—Tentative

There are no meetings scheduled for the week of November 22, 2004.

Week of November 29, 2004—Tentative

There are no meetings scheduled for the week of November 29, 2004.

Week of December 6, 2004—Tentative

Tuesday, December 7, 2004

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, December 8, 2004

1 p.m. Briefing on Status of Davis Besse Lessons Learned Task Force Recommendations (Public Meeting) (Contact: John Jolicoeur, (301) 415–1725).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, December 9, 2004

2 p.m. Briefing on Reactor Safety and Licensing Activities (Public Meeting) (Contact: Steve Koenick, 301–415–1239).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 13, 2004—Tentative

Tuesday, December 14, 2004

1 p.m. Briefing on Emergency Preparedness Program Initiatives (Public Meeting) (Contact: Nader Mamish, 301–415–1086).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m. Briefing on Emergency Preparedness Program Initiatives (Closed—Ex. 1) (Contact: Nader Mamish (301) 415–1086).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities were appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: November 4, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–25024 Filed 11–5–04; 9:34 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, October 15, 2004, through October 28, 2004. The last biweekly notice was published on October 26, 2004 (69 FR 62467).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. (Note: Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide

Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: September 16, 2004.

Description of amendment request: The proposed amendment would revise the scope and the frequency of Surveillance Requirement (SR) 3.7.6.1 for verification of one complete cycle of each turbine bypass valve (TBV) every 92 days. The proposed change to SR 3.7.6.1 would allow a 5 percent stroke rather than a complete (100 percent) stroke of each TBV, and would extend the surveillance frequency from 92 days to 120 days. The complete stroke verification currently required by SR 3.7.6.1 once after each entry into MODE 4 would be retained and renumbered SR 3.7.6.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification Surveillance Requirement (SR) 3.7.6.1 will allow a 5% stroke rather than a complete (100%) stroke of each turbine bypass valve (TBV), and will extend the surveillance frequency from 92 days to 120 days. The requirement to verify one complete cycle of each TBV once after each entry into MODE 4 will be retained.

The proposed testing requirements will provide a level of assurance, equivalent to that which now exists, that the TBVs will remain operable throughout the operating cycle, and that they will be able to perform their intended safety function if called upon to do so. Additionally, the reduction in the potential for plant transients that can result from the current testing requirements, will more than offset the small increase (less than one half of one percent) in TBV failure probability per cycle with the proposed testing regime. Thus the proposed changes will not significantly increase the probability of an accident previously evaluated.

Fermi 2 is analyzed for the increase in reactor pressure transient events with the assumption that the Main Turbine Bypass System (MTBS) is out-of-service. Feedwater Controller Failure Upscale represents the most limiting event in this analytical category, and provides the basis for the Minimum Critical Power Ratio (MCPR) operating limits that are applicable when the MTBS is out of service. Because the proposed testing requirements do not alter the assumptions for any of the increase in pressure transient events, the radiological consequences of an accident previously evaluated are not increased.

Therefore, this proposed amendment will not involve a significant increase in the probability or the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not significantly affect the assumed performance of the TBVs, nor does it affect any other plant systems, structures, or components. In fact, these changes reduce the possibility of secondary plant transients and the potential for recirculation pump runbacks during the performance of this SR while at power. The proposed changes do not install any new plant equipment, nor is installed plant equipment being operated in a new or different manner. The proposed changes in test frequency and methodology will continue to ensure that the TBVs remain capable of performing their intended safety function. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change will modify the scope and the frequency of the quarterly full stroke test of the TBVs. The operability requirements and functional characteristics of the TBVs remain unchanged. The proposed change to SR 3.7.6.1 from full stroke testing to 5% stroke testing, and from 92 days to 120 days has been evaluated to produce only a minimal increase in the failure probability of a TBV during each cycle (less than one half of one percent). This failure probability increase is outweighed by the reduction in the potential for plant transients resulting from full stroke testing during power operation. Both Alstom's sensitivity study, and actual industry experience at Ringhals Units 1 and 2 have shown that a partial stroke test will ensure that the valves remain mechanically operable throughout the operating cycle. The Alstom study further shows that a partial stroke test at 120 days, rather than at 92 days, will ensure that the valves remain mechanically operable throughout the operating cycle. Additionally, retaining the requirement to full stroke test each TBV once after each entry into MODE 4 will continue to verify that the valves are mechanically operable prior to their first use following each startup from MODE 4. The TBV response times are used in determining the effect on the MCPR. The surveillance test that ensures the MTBS meets the system's response time limits (SR 3.7.6.3) is not affected by these proposed changes and will continue to be performed at its current 18 month frequency. Therefore, this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: October 7, 2004.

Description of amendment request: The proposed amendment would revise the Safety Limit Minimum Critical Power Ratio in Technical Specification 2.1.1.2 to reflect the results of cycle-specific calculations performed for Fermi 2 operating Cycles 10 and 11.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The basis of the Safety Limit Minimum Critical Power Ratio (SLMCPR) is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new CPR value preserves the existing margin to transition boiling and probability of fuel damage is not increased. The derivation of the revised SLMCPR for Fermi 2 for incorporation into the Technical Specifications, and its use to determine plant and cycle-specific thermal limits, have been performed using NRC approved methods. These plant-specific calculations are performed each operating cycle and if necessary, will require future changes to these values based upon revised core designs. The revised SLMCPR values do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change results only from a specific analysis for the Fermi 2 Cycle 10 and 11 cores. This change does not involve any new or different methods for operating the facility. No new initiating events or transients result from these changes. Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The new SLMCPR is calculated using NRC approved methods with plant and cycle-specific parameters for the Cycle 10 and 11 core designs. The SLMCPR value is established to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. The operating MCPR limit is set appropriately above the safety limit value to ensure adequate margin when the cycle-specific transients are evaluated. Accordingly, the margin of safety is maintained with the revised values. Therefore, this proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: August 18, 2004.

Description of amendment request: The proposed amendment would correct an inadvertent technical specification (TS) change associated with TS Amendment 184/166 and 182/164. Licensing Amendment 182/164 deleted the safety injection steam line pressure-low (SLPL) function and all concerned references due to redundant safety injection signals. This amendment was approved on September 22, 1998. As part of the conversion to standardized TS (STS), Amendment 184/166, all concerned references to the SLPL function were not correctly deleted from STS 3.3.2. Specifically, a reference to the SLPL function was not deleted from Footnote (c) to STS Table 3.3.2–1 and from the Basis of STS 3.3.2 Function 4.d.(1). Amendment (184/166) was approved on September 30, 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does This LAR Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

No. Approval and implementation of this LAR will have no effect on accident probabilities or consequences since the proposed changes are consistent with those previously reviewed and approved by the NRC in TS Amendment 182/164.

Criterion 2—Does This LAR Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

No. This LAR does not involve any physical changes to the plant. Therefore, no new accident causal mechanisms will be generated. The proposed changes are consistent with those previously reviewed and approved by the NRC in TS Amendment 182/164. Consequently, plant accident analyses will not be affected by these changes.

Criterion 3—Does This LAR Involve a Significant Reduction in a Margin of Safety?

No. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be affected by the proposed changes since they are consistent with those previously reviewed and approved by the NRC in TS Amendment 182/164. Therefore, the proposed changes in this license amendment will not result in a significant reduction in the facility's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: October 12, 2004.

Description of amendment request: The proposed license amendment request would change the Final Safety Analysis Report (FSAR) to reflect that the reactor core isolation cooling (RCIC) system is not required to mitigate the consequences of the control rod drop accident (CRDA). The FSAR revision would clarify that although the RCIC system is designed to initiate and inject into the reactor pressure vessel (RPV) at a low water level (L2), the additional RPV inventory is not required to prevent the accident or to mitigate the consequences of the CRDA.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change clarifies, in various sections of the FSAR, that RCIC system operation is not required in order to mitigate the consequences of the CRDA. The proposed change involves no changes to plant systems or accident analyses. The accident analysis for the CRDA demonstrates that core design, the control rod pattern controls, and the scram signal from the reactor protection system (RPS) effectively prevent damage to the fuel rods as a result of the dropped rod. Furthermore, based on a prescribed source term provided from an assumed damage to less than 2% fuel in the core, the resulting radiological consequences are not affected by RCIC operation or failure to operate. As such, the change does not affect initiation of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change clarifies, in various sections of the FSAR, that the RCIC system operation is not required in order to mitigate the consequences of the CRDA. The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

This change clarifies, in various sections of the FSAR, that the RCIC system operation is not required in order to mitigate the consequences of the CRDA. The change has no effect on plant systems, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 30, 2004.

Description of amendment request: The proposed amendment would change the existing steam generator tube surveillance program to be consistent with that being proposed by the Technical Specifications Task Force (TSTF) in TSTF–449, Draft Revision 2. These proposed changes would revise the Technical Specifications and Bases for Specifications 3.4.13, RCS [Reactor Coolant System] Operational LEAKAGE, Specification 5.5.9, Steam Generator (SG) Tube Surveillance Program, and Specification 5.6.7, Steam Generator Tube Surveillance Reports, and add a new Specification 3.4.16 entitled Steam Generator (SG) Tube Integrity. Also, as a result of the licensee replacing the SGs with SGs having a new Alloy 690 thermally treated tubing design, the Technical Specifications and Bases would be revised to reflect this replacement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change requires a Steam Generator Program that includes performance criteria that will provide reasonable assurance that the steam generator (SG) tubing will retain integrity over the full range of design basis operating conditions (including startup, power operation, hot standby, cooldown, anticipated transients and postulated accidents). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE. These criteria assure that the probability of an accident will not be increased.

The primary to secondary accident induced leakage rate for any design basis accidents, other than an SG tube rupture, shall not exceed the leakage rate assumed in the accident analysis in terms of total leakage rate for all SGs and leakage rate for an individual SG. [The primary to secondary accident induced leakage rate is relatively inconsequential for the SG tube rupture analysis.] The operational LEAKAGE performance criterion meets current NRC regulations and NEI [Nuclear Energy Institute] 97–06 criteria for reactor coolant system (RCS) operational primary to secondary LEAKAGE through any one SG of 150 gallons per day. These criteria assure that accident doses will stay within regulatory and licensing basis limits.

Therefore, the proposed change does not affect the probability or consequences of any ANO–1 [Arkansas Nuclear One, Unit 1] analyzed accidents.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed Steam Generator Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. The proposed change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the Steam Generator Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the Steam Generator Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current technical specifications.

Therefore, the margin of safety is not changed by the proposed change to the ANO–1 TSs.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Michael K. Webb, Acting.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 30, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.2.1, Fuel Assemblies, to permit the use of M5 advanced alloy for fuel rod cladding and fuel assembly structural components. Also, the proposed amendment would modify TS 2.1.1.2, Reactor Core Safety Limits, to allow the use of the high thermal power (BHTP) correlation for departure from nucleate boiling (DNB) calculations of reload cores containing the Mark-B-HTP fuel design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The NRC approved topical reports BAW–10227P–A, Evaluation of Advanced Cladding and Structural Material (M5) in PWR [Pressurized Water Reactor] Reactor Fuel, and BAW–10179P–A, Safety Criteria and Methodology for Acceptable Cycle Reload Analyses, provide the licensing basis for the Framatome ANP (FRA–ANP) advanced cladding and structural material, designated M5. The M5 material was shown in these documents to have equivalent or superior properties to the currently used Zircaloy-4 material. The cladding itself is not an accident initiator and does not affect accident probability. The M5 cladding has been shown to meet all 10 CFR 50.46 design criteria and, therefore, will not increase the consequences of an accident.

The proposed safety limit value ensures that fuel integrity will be maintained during normal operations and anticipated operational occurrences (AOOs), and that the design requirements will continue to be met. The core operating limits will be developed in accordance with the new methodology. The proposed safety limit value does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. There is no impact on the source term or pathways assumed in accidents previously evaluated. No analysis assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose as the result of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of M5 clad fuel will not result in changes in the operation or configuration of the facility. Topical report BAW–10227P–A demonstrated that the material properties of the M5 alloy are similar or better than those of Zircaloy-4. Therefore, M5 fuel rod cladding and fuel assembly structural components will perform similarly to those fabricated from Zircaloy-4, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

In addition, there will be no change in the level of controls or methodology used for processing radioactive effluents or handling solid radioactive waste. Since the material properties of M5 alloy are similar or better than those of Zircaloy-4, there will be no significant changes in the types of any effluents that may be released off-site. There will not be a significant increase in occupational or public radiation exposure.

The proposed safety limit value does not change the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered. The BHTP correlation is not an accident / event initiator. No new initiating events or transients result from the use of the BHTP correlation or the related safety limit changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the M5 alloy are not

significantly different from those of Zircaloy-4. M5 alloy is expected to perform similarly or better than Zircaloy-4 for all normal operating and accident scenarios, including both loss of coolant accident (LOCA) and non-LOCA scenarios. For LOCA scenarios, where the slight difference in M5 material properties relative to Zircaloy-4 could have some impact on the overall accident scenario, plant-specific LOCA analyses will be performed prior to the use of fuel assemblies with fuel rods or fuel assembly components containing M5. These LOCA analyses, required by the ANO–1 [Arkansas Nuclear One, Unit 1] TSs, will demonstrate that all applicable margins of safety will be maintained by the use of M5 alloy.

The proposed safety limit value has been established in accordance with the methodology for the BHTP correlation, to ensure that the applicable margin of safety is maintained (*i.e.*, there is at least 95% probability at a 95% confidence level that the hot fuel rod in the core does not experience DNB). The other reactor core safety limits will continue to be met by analyzing the reload for the mixed core using NRC approved methods, and incorporation of resultant operating limits into the Core Operating Limits Report (COLR).

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Michael K. Webb, Acting.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: September 1, 2004.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4, ''Monthly Operating Reports.''

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated September 1, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The proposed change eliminates the TS reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the Technical Specification reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significance hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: James W. Clifford.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota; Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa; Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin; Docket No. 50–255, Palisades Plant, Van Buren County, Michigan; Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin; Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: October 5, 2004.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) requirements for the licensee to submit annual occupational radiation exposure reports and monthly operating reports for the above nuclear plants. For the Kewaunee and Monticello plants, the licensee is also proposing to adopt a part of Revision 4 to TSTF–258, ''Changes to Section 5.0, Administrative Controls,'' regarding reporting challenges to, and failures, of certain safety/relief valves.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated October 5, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The proposed change eliminates the TS reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the Technical Specification reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Section Chief: L. Raghavan.

Southern Nuclear Operating Company (SNC), Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of amendment request: August 13, 2004.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.7.18, ''Fuel Assembly Storage in the Fuel Storage Pool;'' TS 4.3.1.1, the criticality design features for fuel storage for VEGP Unit 1; and TS 4.3.1.2, the criticality design features for fuel storage for VEGP Unit 2. The proposed amendment would supplant the previous spent fuel rack criticality analysis with updated criticality calculations. Editorial revisions to TS Bases B 3.7.17, ''Fuel Storage Pool Boron Concentration,'' and B 3.7.18, ''Fuel Assembly Storage in the Fuel Storage Pool,'' are included. In addition, Page vi of the Table of Contents will be updated to reflect the correct page number for Figure 5.5.6–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequence of an accident previously evaluated?

SNC has chosen to reanalyze the criticality analyses for the VEGP Unit 1 and Unit 2 spent fuel racks. Westinghouse performed the revised analyses using methods that address the non-conservatisms previously identified in the current analyses. The methodologies used for the revised analysis have been previously approved for use by the NRC.

The analyses revised the enrichment, burnup, and Integral Fuel Burnable Absorber (IFBA) limits required to comply with the allowed storage configurations. The storage configurations and interface requirements in the current Technical Specifications were retained in the revised analyses. The boron dilution evaluation that supported the initial amendments to permit credit for the soluble boron at VEGP continues to remain valid. The analyses demonstrated that Keff remains below unity for the various storage configurations considered with zero soluble boron and that Keff remains less than or equal to 0.95 for the entire pool with credit for soluble boron under non-accident and accident conditions with a 95% probability at a 95% confidence level (95/95).

Core design procedures ensure that new fuel can be stored in one or more of the allowed storage configurations. Administrative controls during fuel fabrication ensure that the fuel is fabricated accordingly to ensure proper loading of the fuel in the fuel assemblies. Administrative controls used to load fuel assemblies into the spent fuel pool ensure that fuel assemblies are stored in compliance with the allowed storage configurations. Fuel handling is performed under many administrative controls and physical limitations. These controls provide reasonable assurance that a criticality accident, fuel fabrication error, or fuel handling accident will not occur.

The change to the page number of Figure 5.5.6–1 on Page vi of the Table of Contents is administrative in nature.

Therefore, based on the conclusions of the above analysis, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

The types of accidents previously evaluated include fuel fabrication errors, criticality accidents, and fuel handling accidents. The analyses revised the enrichment, burnup, and Integral Fuel Burnable Absorber (IFBA) limits required to comply with the allowed storage configurations. No new or other kind of accident can be postulated as a result of the revised analyses.

The change to the page number of Figure 5.5.6–1 on Page vi of the Table of Contents is administrative in nature.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant decrease in the margin of safety?

The analyses revised the enrichment, burnup, and Integral Fuel Burnable Absorber (IFBA) limits required to comply with the allowed storage configurations. The boron dilution evaluation that supported the initial amendments to permit credit for soluble boron at VEGP was shown to remain valid. The analyses demonstrated that Keff remains below unity for the various storage configurations considered with zero soluble boron and that Keff remains less than or equal to 0.95 for the entire pool with credit for soluble boron under non-accident and accident conditions with a 95% probability at a 95% confidence level (95/95).

The change to the page number of Figure 5.5.6–1 on Page vi of the Table of Contents is administrative in nature.

Therefore, the proposed change does not involve a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

Date of amendment request: July 8, 2004 (TS–427).

Description of amendment request: The proposed amendment removes the requirement to maintain an automatic transfer capability for the power supply to the Low Pressure Coolant Injection (LPCI) inboard injection and recirculation pump discharge valves. In addition, the licensee has requested to delete the references to Reactor Motor Operator Valve Boards D and E from Limiting Condition for Operation 3.8.7, and the Actions in 3.8.7 have been requested to be revised and/or renumbered, as appropriate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed Technical Specification change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Neither Reactor Motor Operated Valve (RMOV) Boards D and E, the equipment they power, nor the automatic power transfer

feature provided for these boards are precursors to any accident previous [sic] evaluated in the Updated Final Safety Analysis Report (UFSAR). Therefore, the probability of an evaluated accident is not increased by modifying this equipment.

The proposed deletion of the requirement to maintain an automatic transfer capability for the power supply to the LPCI inboard injection and recirculation pump discharge valves does not change the number of Emergency Core Cooling System (ECCS) subsystems credited in the BFN licensing basis. Therefore, the proposed TS changes will not significantly increase the consequences of an accident previously evaluated.

2. Does the proposed Technical Specification change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed deletion of the requirement to maintain an automatic transfer capability for the power supply to the LPCI inboard injection and recirculation pump discharge valves does not introduce new equipment, which could create a new or different kind of accident. No new external threats, release pathways, or equipment failure modes are created. Therefore, the proposed deletion of the requirement to maintain an automatic transfer capability for the power supply to the LPCI inboard injection and recirculation pump discharge valves will not create a possibility for an accident of a new or different type than those previously evaluated.

3. Does the proposed Technical Specification change involve a significant reduction in a margin of safety?

Response: No.

The proposed deletion of the requirement to maintain an automatic transfer capability for the power supply to the LPCI inboard injection and recirculation pump discharge valves does not change the number of ECCS subsystems credited in the BFN licensing basis. The requirements of 10 CFR 50.46 and Appendix K continue to be met. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall, Jr.

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant (BFN), Unit 1, Limestone County, Alabama

Date of amendment request: August 2, 2004 (TS–435).

Description of amendment request: Modify the COMPLETION TIME for Technical Specification Limiting Condition for Operation (LCO) 3.6.3.1, Containment Atmosphere Dilution (CAD) System. The proposed change would extend the current completion time of 7 days with two CAD subsystems inoperable from existing requirement to shut down the reactor within 13 hours in accordance with LCO 3.0.3, when both CAD subsystems are inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The safety-related function of the CAD system is to mitigate the effects of a loss-of-coolant-accident (LOCA) by limiting the volumetric concentration of oxygen in the primary containment atmosphere. The CAD System is not an event initiator, therefore, the probability of the occurrence of an accident is not affected by this proposed Technical Specification change. Emergency procedures preferentially use the normal containment inerting system to provide post accident vent and purge capability, with the CAD system only serving in a backup role to this system. Hence, in the event of the inoperability of both CAD subsystems, the proposed TS require the normal containment inerting system to be verified available as an alternate oxygen control means. Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce new equipment, which could create a new or different kind of accident. This proposed change does not result in any changes to the CAD equipment design or capabilities or to the operation of the plant. No new external threats, release pathways, or equipment failure modes are created. Therefore, the implementation of the proposed change will not create a possibility for an accident of a new or different type than those previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

As stated in GL [Generic Letter] 84–09, a Mark I type boiling water reactor (BWR) plant does not rely upon purge/repressurization systems such as CAD as its primary means of hydrogen control when the unit is operated in accordance with certain technical criteria. The BFN units are operated in accordance with these criteria. The BFN Unit 1 containment is inerted with nitrogen during normal operation, nitrogen from the containment inerting system with a backup from the CAD system is used for pneumatically operated components inside containment, and there are no potential sources of oxygen generation inside containment other than the radiolytic decomposition of water. The system preferred by the Emergency Operating Instructions (EOIs) for oxygen control post-accident is the normal primary containment inerting system. Because the probability of an accident involving hydrogen and oxygen production is small, CAD is not the primary system used to mitigate the creation of combustible containment atmosphere mixtures, and because the requested LCO where both CAD subsystems is inoperable is not long, no significant reduction in the margin of safety is associated with this proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall, Jr.

Tennessee Valley Authority (TVA), Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 18, 2004.

Description of amendment request: The proposed amendment would update the reactor coolant system (RCS) and emergency core cooling system (ECCS) technical specifications (TSs). These changes include deleting TS 3/4.4.2, ''Safety Valves—Shutdown'' in its entirety, revising the action requirements for TS 3/4.4.3, ''Safety and Relief Valves—Operating,'' and deleting surveillance requirement 4.4.3.2.1.a for TS 3.4.3.2, ''Relief Valves—Operating.'' The proposed changes are consistent with the Sequoyah (SQN) safety analyses provided in the SQN Updated Final Safety Analyses Report and the improved standard technical specifications (NUREG–1431, Revision 3).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. TVA's proposed TS revisions do not involve a significant increase in the probability of any accidents previously evaluated. TVA's proposed TS revisions provide improvements to the RCS and ECCS requirements to include appropriate reference to SQN's PTLR [PressureTemperature Limits Report] requirements. The proposed revision is a TS improvement that remains consistent with the improved standard TS requirements for Pressurized Water Reactors (PWRs) (NUREG–1431, Revision 3). TVA's proposed revision to delete SQN TS 3/4.4.2.1, ''Reactor Coolant Safety Valves—Shutdown,'' does not involve a significant increase in the probability of any accident previously evaluated. Pressurizer code safety valve requirements are not applicable for plant shutdown conditions (*i.e.,* modes 4 and 5) because the valves do not perform a safety function in these modes. The pressurizer code safety valves are not used as inputs to initiating events or accidents previously evaluated. Protection of the RCS against an overpressure condition in modes 4 and 5 is provided by the LTOP [low temperature overpressure protection] system which is governed by SQN TS 3.4.12. The setpoint for the pressurizer code safety valves is sufficiently high such that the safety valves do not afford protection to the RCS during low temperature operation. Accordingly, there is no impact on the consequences previously evaluated for the proposed change.

The proposed revisions are not the result of changes to plant equipment, test methods or operating practices. The proposed changes do not contribute to the generation or assumptions for postulated accidents. The proposed changes do not affect the design basis accidents or their assumptions. The revisions to SQN TSs continue to support SQN's required safety functions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed revisions are not the result of changes to plant equipment or plant design. The proposed revisions adopt standard TS requirements that are consistent with SQN's safety analysis and design and provide improvements over the existing requirements. The safety functions of the RCS and ECCS remain unchanged and do not affect any assumptions in SQN's accident analyses.

TVA's proposed change to delete the mode 4 and mode 5 TS requirements for pressurizer safety valves is consistent with the Policy Criterion of 10 CFR 50.36. The pressurizer code safety valves are not assumed to function for any safety analysis in modes 4 and 5 and consequently, the proposed changes do not create the possibility of a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed TS change does not involve a significant reduction in a margin of safety. TVA's proposed revisions will not result in changes to system design features or plant features that could be precursors to accidents or potential degradation of accident mitigation systems. The proposed changes to the RCS and ECCS requirements remain consistent with the current TS requirements for equipment operability. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

TVA's proposed change that removes the requirement for a pressurizer safety valve in modes 4 and 5 does not affect any margin of safety because the lift setting of the pressurizer code safety valves (2485 pounds per square inch gauge [psig] ±3 percent) is well above the limit needed to protect the RCS during low temperature operation and would not provide any safety function for overpressure protection in the lower modes. The TS requirements associated with low temperature operation are governed by SQN TS 3/4.4.12, LTOP system. The LTOP system provides the necessary overpressure protection for SQN's RCS in modes 4 and 5.

Accordingly, TVA's proposed deletion of operability requirements for SQN's pressurizer code safety valves for modes 4 and 5 will not affect the margin of safety.

The United States Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall, Jr.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 12, 2004.

Brief description of amendment request: The proposed amendment would approve an engineering evaluation performed in accordance with Pilgrim Nuclear Power Station Technical Specification (TS) 3.6.D.3 to justify continued power operation with a safety relief valve discharge pipe temperature exceeding 212 degrees Fahrenheit for greater than 24 hours as required by TS 3.6.D.4.

Date of publication of individual notice in ***Federal Register***: October 20, 2004 (69 FR 61695).

Expiration date of individual notice: December 19, 2004.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these

items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.* (Note: Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.)

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: July 30, 2004.

Brief description of amendment: The proposed amendment would (1) add License Condition 2.C.(22) requiring an integrated tracer gas test of the control room envelope using methods described in American Society for Testing and Materials E741–00, ''Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution,'' and (2) delete Surveillance Requirement 3.7.3.6, which requires verification that unfiltered inleakage from control room emergency filtration system duct work outside the control room envelope is within limits.

Date of issuance: October 25, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 162.

Facility Operating License No. NPF–43: Amendment adds a license condition and revises the Technical Specifications.

Date of initial notice in ***Federal Register***: August 13, 2004 (69 FR 50217)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 2004.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 21, 2003, as supplemented by letters dated February 10, 2004, and August 24, 2004.

Brief description of amendment: Modifies the Technical Specifications (TSs) to delete TS 3.6.4.4, ''Shield Building Annulus Mixing System'' and a reference to TS 3.6.4.4 within TS 3.10.1, ''Inservice Leak and Hydrostatic Testing Operation,'' and revise TS Surveillance Requirement 3.6.1.3.10, main steam isolation valve leakage limits.

Date of issuance: October 15, 2004.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 143.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: May 25, 2004 (69 FR 29764). The supplement dated August 24, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 2004.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: February 16, 2004, as supplemented by letters dated June 8 and August 26, 2004.

Brief description of amendment: Modifies the Technical Specifications (TSs) to change Surveillance Requirement 3.6.5.1.3 of TS 3.6.5.1, ''Drywell,'' to allow a one-time extension of the test interval for the next drywell bypass leakage rate test from 10 years to 15 years.

Date of issuance: October 15, 2004.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 144.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: May 25, 2004 (69 FR 29765). The supplements dated June 8 and August 26, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 2004.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: January 29, 2004, as supplemented on April 12, June 16, June 30, July 16, August 3, August 12, and September 24, 2004.

Brief description of amendment: The amendment revises the operating license and Technical Specifications to authorize an increase in the maximum steady-state reactor core power level from 3114.4 megawatt thermal (MWt) to 3216 MWt. This represents a nominal increase of 3.26% rated thermal power.

Date of issuance: October 27, 2004.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 241.

Facility Operating License No. DPR–26: Amendment revised the Facility Operating License and the Technical Specifications.

Date of initial notice in ***Federal Register***: March 2, 2004 (69 FR 9859). The April 12, June 16, July 16, August 3, August 12, and September 24, 2004, supplements provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: January 15, 2004, and supplemented on July 19, 2004.

Brief description of amendments: The amendments provide for an alternative means of testing the main steam Electromatic relief valves and the dual function Target Rock safety/relief valves.

Date of issuance: October 19, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 211/203, 222/217.

Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: March 16, 2004.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 19, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: August 19, 2003.

Brief description of amendments: The amendments modify Technical Specification (TS) 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' to allow an exception to the testing guidance contained in Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program.'' Specifically, the TS change will allow potential valve atmospheric leakage paths (*e.g.*, valve stem packing) that are not exposed to test pressure during reverse-direction Type B or C tests (local leakage rate tests) to instead be tested during regularly scheduled Type A tests (integrated leakage rate tests).

Date of issuance: October 14, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 168/154.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 23, 2003 (68 FR 74266).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 14, 2004.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1 (BVPS–1), Beaver County, Pennsylvania

Date of application for amendment: June 28, 2004, as supplemented September 3, 2004.

Brief description of amendment: The amendment revised the BVPS–1 Technical Specifications (TSs) surveillance requirements (SRs) 4.4.5.4.a.6, 4.4.5.4.a.8, and 4.4.5.5.d.1 and added SRs 4.4.5.4.a.11 and 4.4.5.5.e for Cycle 17 operation only. The change revised the definition of steam generator tube inspection scope in SR 4.4.5.4.a.8 to exclude the portion of the tube within the tubesheet below the W* distance, tube to tubesheet weld and tube-end extension by crediting the Westinghouse W* methodology as described in Topical Report WCAP–14797, Revision 2.

Date of issuance: October 15, 2004.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented within 60 days.

Amendment No.: 262.

Facility Operating License No. DPR–66: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 3, 2004 (69 FR 46584). The supplement dated September 3, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 2004.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 9, 2003, as supplemented September 16, 2004.

Brief description of amendment: The amendment allows a one-time increase in the completion time for restoring an inoperable emergency feedwater (EFW) system train to operable status to allow the realignment of the diesel-driven EFW pump during power operations.

Date of issuance: October 21, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 214.

Facility Operating License No. DPR–72: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 30, 2004 (69 FR 16620). The September 16, 2004, supplemental letter provided additional information that clarified the application, but did not expand the scope of the application as originally noticed and did not change the U.S. Nuclear Regulatory Commission staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 2004.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 3, 2004.

Description of amendment request: This amendment revised a footnote to clarify a surveillance requirement and associated bases for emergency diesel generator testing.

Date of issuance: October 25, 2004.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 98.

Facility Operating License No. NPF–86: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 16, 2004 (69 FR 12371).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 2004.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 15, 2004, as supplement by letters dated September 28 and October 14, 2004.

Brief description of amendment: The amendment revises the Technical Specification (TS) Section 3.8.1, AC Sources—Operating, Condition B, to provide a one-time extension of the allowed outage time for one Diesel Generator (DG) inoperable from 7 days

to 14 days and TS Section 3.8.3, Diesel Fuel Oil, Lube Oil, and Starting Air, Limiting Condition for Operation, to allow the use of temporary fuel oil storage tanks to supply the required fuel oil storage inventory.

Date of issuance: October 15, 2004.

Effective date: As of the date of issuance and shall be implemented on or before October 22, 2004.

Amendment No.: 207.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: August 3, 2004 (69 FR 46586). The supplements dated September 28 and October 14, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: December 23, 2003, as supplemented by letter dated August 16, 2004.

Brief description of amendments: The amendments modify technical specification (TS) requirements to adopt the provisions of Industry/TS Task Force (TSTF) change TSTF–359, ''Increased Flexibility in Mode Restraints.''

Date of issuance: October 20, 2004.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 167, 157.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: September 16, 2004 (69 FR 55844) The supplement dated August 16, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 2004.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 1, 2003, as supplemented by letter dated July 2, 2004.

Brief description of amendment: The amendment changes the Fort Calhoun Station, Unit No. 1 Technical Specifications (TS) 2.7, ''Electrical Systems, TS Table 3–5, ''Minimum Frequencies for Equipment Tests,'' and TS 5.0, ''Administrative Controls,'' to modify the requirements for the diesel generator (DG) fuel oil for consistency with the Improved Standard Technical Specifications. The amendment also adds requirements for the DG lubricating oil and DG starting air.

Date of issuance: October 21, 2004.

Effective date: October 21, 2004, and shall be implemented within 120 days from the date of its issuance.

Amendment No.: 229.

Renewed Facility Operating License No. DPR–40: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: February 17, 2004 (69 FR 7526). The additional information provided in the supplemental letter dated July 2, 2004, did not expand the scope of the application as noticed and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated October 21, 2004.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 23, 2003, as supplemented by letters dated June 24, 2004 and August 26, 2004.

Brief description of amendment: The amendment revised Technical Specifications to delete the Surveillance Requirement associated with the emergency diesel generator lockout features.

Date of issuance: October 22, 2004.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 155.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 9, 2003 (68 FR 68671). The June 24, 2004, and August 26, 2004, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original ***Federal Register*** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 2004.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 12, 2003.

Brief description of amendment: The amendment revised the operating conditions for which Technical Specification (TS) 3/4.3.7.1, ''Radiation Monitoring Instrumentation,'' requires the control room ventilation radiation monitor to be operable. Additionally, the amendment revised the operating conditions for which TS 3/4.7.2, ''Control Room Emergency Filtration System,'' is applicable.

Date of issuance: October 28, 2004.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 156.

Facility Operating License No. NPF–57: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** February 17, 2004 (69 FR 7527).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 2004.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 24, 2003, as supplemented by letter dated June 8, 2004.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to allow the use of GE14 fuel in reload cycle 13. Specifically, the change modified the TSs to reflect the use of General Electric (GE) core reload analysis methodology. The change revised the limiting conditions for operation for the recirculation loops to modify and add action statements to provide further thermal limit control during single-loop operation to be consistent with the GE methodology specified in the core operating limits report. The change also

modified the TS definitions and TS requirements for average planar linear heat generation rate. Additionally, TS Section 6.9.1.9 is revised to correct an error from a previous amendment that inadvertently removed a reference.

Date of issuance: October 20, 2004.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 154.

Facility Operating License No. NPF–57: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** February 17, 2004 (69 FR 7528). The June 8, 2004 letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 2004.

No significant hazards consideration comments received: No.

Dated in Rockville, Maryland, this 1st day of November 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–24804 Filed 11–8–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Interim Staff Guidance Documents For Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Wilkins Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–5788; fax number: (301) 415–5370; e-mail: *wrs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) plans to issue Interim Staff Guidance (ISG) documents for fuel cycle facilities. These ISG documents provide clarifying guidance to the NRC staff when reviewing either a license application or a license amendment request for a fuel cycle facility under 10 CFR part 70. The NRC is soliciting public comments on the ISG documents which will be considered in the final versions or subsequent revisions.

II. Summary

The purpose of this notice is to provide the public an opportunity to review and comment on a draft Interim Staff Guidance document for fuel cycle facilities. Interim Staff Guidance–09 provides guidance to NRC staff relative the requirements associated with the use of Initiating Event Frequencies (IEFs) for demonstrating compliance with the performance requirements of 10 CFR 70.61.

III. Interim Staff Guidance–09, Initiating Event Frequency, Draft October 20, 2004 Issue

This guidance addresses the measures needed to assure the validity and maintenance of initiating event frequencies (IEFs) used to demonstrate compliance with the performance requirements for 10 CFR 70.61.

Introduction

The purpose of this Interim Staff Guidance (ISG) is to clarify the use of IEFs for demonstrating compliance with the performance requirements of 10 CFR 70.61. NUREG–1718, ''Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility,'' and NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility,'' provide methods for reviewing integrated safety analyses (ISAs), employing a semi-quantitative risk index method. While one of these methods is used below to illustrate the use of IEFs, applicants and licensees may use other methods which would produce similar results. There is no particular method explicitly mandated, and sequences that are risk significant or marginally acceptable are candidates for more detailed evaluation by the applicant or licensee and reviewer.

Discussion

Each licensee or applicant is required to perform an ISA to identify all credible high-consequence and intermediate-consequence events. The risk of each such credible event is to be limited through the use of appropriate engineered and/or administrative controls to meet the performance requirements of 10 CFR 70.61. Such a control is referred to as an item relied on for safety (IROFS). In turn, a safety program must be established and maintained to assure that each IROFS is available and reliable to perform its intended function when needed. The safety program may be graded such that management measures applied are graded commensurate with the reduction of risk attributable to that item. In addition, a configuration management system must be established pursuant to § 70.72, to evaluate changes, to assure, in part, that the IROFS are not removed without at least equivalent replacement of the safety function.

The risk of each credible event is determined by cross-referencing the severity of the consequence of the unmitigated accident sequence with the likelihood of occurrence in a risk matrix with risk index values. The likelihood of occurrence risk index values can be determined by considering the criteria in NUREG–1520, Tables A–9 through A–11. Accident sequences result from initiating events which are followed by the failure of one or more IROFS. Initiating events can be (1) an external event such as a hurricane or earthquake, (2) a facility event external to the process being analyzed (*e.g.*, fires, explosions, failures of other equipment, flooding from facility water sources), (3) deviations from normal operations of the process (credible abnormal events), or (4) failures of an IROFS in the process. Additional guidance regarding initiating probabilities from natural phenomena hazards are addressed in ISG–08, *Natural Phenomena Hazards*.

An initiating event does not have to be an IROFS failure. An item only becomes an IROFS if it is credited in the ISA for mitigation or prevention per the definition in § 70.4. If an item, whose failure initiates an event, has strictly an operational function, it does not have to be an IROFS. This applies to external events and can apply to internal events. If the item whose failure initiates an event, has solely a safety function that is credited in the ISA, then it should be an IROFS. If the item has both an operational and a safety function, the safety function should make it an IROFS (for its ISA credited safety features only).

IEFs can play a significant role in determining whether the performance requirements of § 70.61 are met for a particular accident sequence. Whether an initiating event is due to an IROFS or a non-IROFS failure, licensees should take appropriate action to assure that any change to the basis for assigning an IEF value to that event is evaluated on a continuing basis to ensure continued compliance with the performance requirements. For example, a non-IROFS component may not be subject to the same QA program controls and other management measures that an IROFS

would receive (i.e., surveillance, testing, procurement, etc.). However, appropriate management controls should be considered, in a graded manner, to provide assurance that performance requirements are met over time. The ability to identify a non-IROFS component failure, similar to that for IROFS, may be needed to provide feedback on failure rates and IEFs to the ISA process. Changes to the IEF values may result from changes to a component's design, procurement, operation, or maintenance history, as well as new or increased external plant hazards, and should be considered in a graded approach.

Regulatory Basis

10 CFR 70.61, Performance Requirements.

10 CFR 70.62, Safety Program and Integrated Safety Analysis.

10 CFR 70.65, Additional Content of Applications.

10 CFR 70.72, Facility Changes and Change Process.

Applicability

This guidance is for use in those cases where an applicant or licensee chooses to use an IROFS or non-IROFS failure IEF for risk determination.

Technical Review Guidance

1. IEF and Identification of an IROFS

Example. A licensee uses a heater/blower unit to heat a UF_6 cylinder in a hot box to liquify the contents prior to sampling. The unmitigated accident sequence involves the failure of the controller for the heater/blower resulting in overheating the cylinder. This results in the cylinder becoming overpressurized and rupturing, releasing the UF_6 to the surrounding process area. Such a release is analyzed to exceed the performance requirements of § 70.61. The licensee has two basic choices: (1) Assume the initiating event probability =1 and provide an appropriate level of mitigation or prevention solely through one or more IROFS, or (2) assign a value to the initiating event (blower/heater controller failure) and provide one or more preventive or mitigative IROFS to bring the accident sequence risk within the performance requirements.

If the licensee chooses (2) above and assigns an appropriate value to the IEF, the indices of NUREG–1520, Table A–9, Failure Frequency Index Number, may be used. The controller for the heater/blower unit would be assigned an appropriate Frequency Index Number. The licensee would then analyze the accident sequence and determine whether additional IROFS are necessary to meet the performance requirements. There are now two variables that feed into the risk determination: one or more IROFS failure frequencies and the IEF of the non-IROFS controller for the heater/blower unit. Changes to the initiating event that impact the IEF of the non-IROFS controller for the heater/blower unit in a manner that changes the licensee's previous determination of compliance with the performance requirements must be evaluated per § 70.72(a).

2. IEF Index Use

Indices may be used to determine the overall likelihood of an accident sequence. NUREG–1520, Table A–9, Failure Frequency Index Numbers, identifies frequency index numbers based on specified evidence. The evidence used by applicants and licensees should be supportable and documented in the ISA summary as required by § 70.65(b)(4). The evidence cited in the ISA documentation should not be limited to anecdotal accounts and must demonstrate compliance with the descriptive definitions of unlikely, highly unlikely, and credible, as required by § 70.65(b)(9). The rigor and specificity of the documented evidence should be commensurate with the item's importance to safety, and the data should support the frequency chosen (*e.g.*, data from 30 years of plant operating experience based on a single component typically could not be expected to support a 10 E–2 failure probability).

An item's failure rate should be determined from actual data for that specific component or safety function in the current system design under the current environmental conditions. When specific failure data is limited or not available, the applicant or licensee may use more ''generic'' data with appropriate substantiation. However, when less specific failure data is available, appropriate conservatism should be exercised in assigning frequency indices. The footnote to Table A–9 that states ''indices less than (more negative than) -1 should not be assigned to IROFS unless the configuration management, auditing and other management measures are of high quality, because without those measures, the IROFS may be changed or not maintained,'' should also be applied to non-IROFS IEFs. In this case, appropriate management controls should be provided to assure that any changes to the evidence supporting IEF indices will be identified and promptly evaluated to ensure that the performance requirements of § 70.61 are met. A graded approach may be used in applying management controls based on the IEF values; however, how this will be done should be identified in the ISA Summary.

Possible changes to IEFs, failure rates, and the assumptions they are based on should be periodically evaluated by the licensee to assure that any change to an IEF has been accounted for in the ISA process. Over time an IEF may change because of component aging or deterioration. Maintenance and performance experience should be fed back into the IEF evaluation. IEF changes could involve, for example, the introduction of new or hazards from nearby processes or new materials, changes in design, maintenance, or operation activities, etc. The applicant or licensee should establish management measures, which may be graded, to periodically confirm that there have been no changes to the ISA assumptions. For example, an applicant or licensee may choose to verify that there have been no changes to hazards from maintenance activities during a certain period of time based on an appropriate documented technical review or audit under the QA program.

Whatever strategy the applicant or licensee chooses to employ should have an outcome of timely identification, and periodic evaluation, of failure rates followed by a prompt evaluation of the failure rate change on the ISA assumptions. This can be accomplished in accordance with the corrective maintenance program and/or the Quality Assurance (QA) problem identification and corrective action system.

Indices particularly relied upon (*i.e.*, <-1) for overall likelihood will be reviewed during the ISA review process.

3. External IEFs

Possible changes to non-natural phenomena external events should be periodically evaluated by the licensee to assure that any change to an IEF has been accounted for in the ISA process. Such changes could involve, for example, the introduction of new hazards from an adjoining industrial site, changes in adjoining transportation activities, etc. The applicant or licensee should establish management measures, which may be graded, to periodically confirm that there have been no changes to the ISA assumptions. For example, an applicant or licensee may choose to verify that there have been no changes to outside hazards based on a two- to three-year review under the QA program.

4. Assurance

The Safety Program required by § 70.62(a) should have provisions for implementing the appropriate management controls to maintain the validity of the IEFs. Consideration should also be given to commitments in the QA program or a specific license condition.

References

U.S. Code of Federal Regulations, title 10, part 70, ''Domestic Licensing of Special Nuclear Material,'' U.S. Government Printing Office, January 1, 2003.

NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility,'' U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, March 2002.

NUREG–1718, ''Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility,'' U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, August 2000.

IV. Further Information

Comments and questions should be directed to the NRC contact listed above by December 9, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Dated in Rockville, Maryland, this 3rd day of November, 2004.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Chief, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–24890 Filed 11–8–04; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Briefing on New Postal Service Rollforward Model

AGENCY: Postal Rate Commission.

ACTION: Notice of public briefing.

SUMMARY: The Postal Service will present a briefing and demonstration of its new PC-based rollforward model software on Tuesday, November 16, 2004 at 10 a.m. in the Commission's hearing room. The briefing will address the history of the Postal Service's rollforward model, reasons why the new version was developed, and components of the new model. A question-and-answer session will follow. The meeting is open to the public.

DATES: Tuesday, November 16, 2004.

ADDRESSES: Postal Rate Commission (hearing room), 1333 H Street NW., Washington, DC 20268–0001, Suite 300.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

69 FR 7530, February 17, 2004.

Earlier this year, the Postal Rate Commission gave a public demonstration of the new computer software model it has developed to handle the cost model/rollforward function in rate cases. The Postal Service has likewise been involved in updating its rollforward software. For the Postal Service, this would mean moving from a mainframe platform to a PC-based platform. This presentation will be quite similar in content and format to that provided by the Commission. As with the Commission's new software, the primary purpose of the Postal Service's new model is not to change the substance of the rollforward methodology, but rather to perform the same computational operations and achieve the same results using a different computer platform. The demonstration will use the rollforward model from the last omnibus rate case to illustrate how the model works.

The Postal Service anticipates having a version of the model available on the Commission's Web site, *http://www.prc.gov,* so that interested observers can load the model and follow along on their own computers. There are a limited number of computer outlets in the hearing room which will be available for use during the presentation. Interested persons should contact Steven W. Williams at 202–789–6842.

Steven W. Williams,

Secretary.

[FR Doc. 04–24943 Filed 11–8–04; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50622; File No. SR–BSE–2004–25]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 Thereto Relating to the Specialist Performance Evaluation Program

November 2, 2004.

I. Introduction

On June 21, 2004, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules concerning its Specialist Performance Evaluation Program (''SPEP''). On July 26, 2004, the BSE submitted Amendment No. 1 to the proposed rule change.[3] On August 25, 2004, the BSE submitted Amendment Nos. 2[4] and 3[5] to the proposed rule change. The proposed rule change, as amended by Amendment Nos. 1, 2 and 3, was published for comment in the **Federal Register** on September 3, 2004.[6] The Commission received no comments on the proposed rule change.

On October 15, 2004, the BSE submitted Amendment No. 4 to the proposed rule change.[7] This order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from John Boese, Vice President, Chief Regulatory Officer, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 22, 2004 and accompanying Form 19b–4 (''Amendment No. 1''). Amendment No. 1 replaced and superceded the originally filed proposed rule change.

[4] *See* letter from John Boese, Vice President, Chief Regulatory Officer, BSE, to Nancy Sanow, Assistant Director, Division, Commission, dated August 18, 2004 (''Amendment No. 2''). Amendment No. 2 replaced and superceded BSE Rule Chapter XV, Section 17, Paragraph (a) of the previously filed proposed rule change.

[5] *See* letter from John Boese, Vice President, Chief Regulatory Officer, BSE, to Nancy Sanow, Assistant Director, Division, Commission, dated August 19, 2004 (''Amendment No. 3''). Amendment No. 3 replaced and superceded BSE Rule Chapter XV, Section 17, Paragraph (a) of the previously filed proposed rule change.

[6] *See* Securities Exchange Act Release No. 50287 (August 27, 2004), 69 FR 53966.

[7] *See* letter from John Boese, Vice President, Chief Regulatory Officer, BSE, to Nancy Sanow, Assistant Director, Division, Commission, dated October 6, 2004 (''Amendment No. 4''). In Amendment No. 4, the BSE proposed permanent approval of the SPEP by deleting Paragraph (f) of Chapter XV, Dealer-Specialists, Section 17, Specialist Performance

approves the proposed rule change, as amended by Amendment Nos. 1, 2, 3 and 4. Simultaneously, the Commission is providing notice of filing of Amendment No. 4 and granting accelerated approval of Amendment No. 4.

II. Description

The Exchange proposes to amend the SPEP, which is set forth in Chapter XV, Dealer-Specialists, Section 17, Specialist Performance Evaluation Program. Specifically, the BSE proposes to eliminate the current measurement standards set forth in the rule and replace them with a ranking program based on statistics reported under Rule 11Ac1–5 under the Act[8] (''Rule 5'').[9] Because the measurement standards will no longer be set forth in the rule, the BSE proposes to communicate the measurement standards and thresholds to members via Floor Memoranda, at least thirty days in advance, at least each time a new Rule 5 measurement is chosen, or a new threshold is established. The BSE also proposes to replace references to the Performance Improvement Action Committee (''PIAC'') in the rule text with the Market Performance Committee (''MPC''), because the PIAC, a subcommittee of the MPC, has been abolished by the Exchange, and its duties have been subsumed by the MPC.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[10] and, in particular, the requirements of Section 6(b) of the Act[11] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[12] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission finds that utilizing Rule 5 measurements for SPEP should provide the Exchange with greater flexibility in tailoring its SPEP criteria to respond to market conditions. The BSE, as part of its self-regulatory responsibilities, must conduct effective oversight of specialists. Among the obligations imposed upon specialists by the Act and the rules thereunder is engaging in a course of dealings for their own accounts to assist in the maintenance of fair and orderly markets in their designated securities.[13] To ensure that specialists fulfill their obligations, the Exchange must review specialists' performance. The Commission believes that the BSE's SPEP is critical to this oversight.

The Commission notes that the proposed rule change, as amended, includes objective measures of performance, as derived from Rule 5. The Commission believes that the Rule 5 measurements should provide the BSE with adequate statistics upon which to evaluate its specialists' performance. Further, the SPEP contains procedures for the review and discipline of specialists who fail to perform their obligations adequately.

In Amendment No. 4, the BSE proposed to make its SPEP permanent. The Commission notes that the SPEP rule have been subject to notice and comment and that no comments have been received. The Commission believes that the proposed SPEP program, which utilizes Rule 5 measurements and sets forth a review and disciplinary procedures, merits permanent approval. The Commission emphasizes, however, that the BSE should continue to closely monitor the conditions for review and should take steps to ensure that all specialists whose performance is deficient will be subject to meaningful review. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5)[14] and Section 19(b)(2) of the Act,[15] to approve Amendment No. 4 on an accelerated basis prior to the 30th day of the date of publication of notice of filing thereof in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2004–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2004–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 4 that are filed with the Commission, and all written communications relating to Amendment No. 4 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–25 and should be submitted on or before November 30, 2004.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–BSE–2004–25), as amended by Amendment Nos. 1, 2 and 3, be, and hereby is, approved, and that Amendment No. 4 to the proposed rule change be, and hereby is, approved on an accelerated basis.

Evaluation Program, which limited the effective date of the SPEP through December 31, 2004.

[8] 17 CFR 240.11Ac1–5.

[9] *See* Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 (December 31, 2000) (adopting Rule 5).

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] Rule 11b–1, 15 CFR 240.11b–1.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3076 Filed 11–8–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50620; File No. SR–CHX–2004–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Trading of Nasdaq/NM Securities

November 2, 2004.

SUMMARY: Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on October 29, 2004, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has requested a six-month extension of the pilot relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot amended CHX Article XX, Rule 37 and CHX Article XX, Rule 43. The pilot currently is due to expire on November 1, 2004. The Exchange proposes that the pilot remain in effect on a pilot basis through May 1, 2005. The text of the proposed rule change is available at the principal offices of the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has requested a six-month extension of the pilot relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot amends CHX Article XX, Rule 37 and CHX Article XX, Rule 43. The pilot currently is due to expire on November 1, 2004; the Exchange proposes that the amendments remain in effect on a pilot basis through May 1, 2005.

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[3] Among other things, these rules rendered the Exchange's BEST Rule guarantee (CHX Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (the ''MAX'' system).[4]

On January 3, 1997, the Commission approved, on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to SEC Rule 11Ac1–1 (the ''NBBO'').[5] When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April 1997. Six months of trading data did not become available until November 1997. As a result, the Exchange requested an additional three-month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[6] The Exchange submitted the report to the Commission on January 30, 1998. Subsequently, the Exchange requested another three-month extension, in order to give the Commission adequate time to approve the pilot program on a permanent basis. On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.[7] On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.[8] On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June 30, 1999.[9] On June 30, 1999, the Commission approved the pilot for an additional seven-month period, until January 31, 2000.[10] On January 31, 2000, the Commission approved the pilot for an additional three-month period, until May 1, 2000.[11] On May 1, 2000, the Commission approved the pilot for an additional six-month period, until November 1, 2000.[12] On November 15, 2000, the Commission approved the pilot for an additional one-year period, until November 1, 2001.[13] On November 1, 2001, the pilot was extended for an additional one-year period, until November 1, 2002.[14] On November 1, 2002, the pilot was extended for an

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2); *see also* Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999)(order expanding the number of eligible securities to 1000).

[4] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. *See* CHX Rules, Art. XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does not apply, but MAX system handling rules remain applicable.

[5] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

[6] *See* Securities Exchange Act Release No. 39512 (December 31, 1997), 63 FR 1517 (January 9, 1998).

[7] *See* Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

[8] *See* Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

[9] *See* Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

[10] *See* Securities Exchange Act Release No. 41586 (June 30, 1999), 64 FR 36938 (July 8, 1999).

[11] *See* Securities Exchange Act Release No. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000).

[12] *See* Securities Exchange Act Release No. 42740 (May 1, 2000) 65 FR 26649 (May 8, 2000).

[13] *See* Securities Exchange Act Release No. 43565 (November 15, 2000), 65 FR 71166 (November 29, 2000).

[14] *See* Securities Exchange Act Release No. 45010 (November 1, 2001), 66 FR 56585 (November 8, 2001).

additional one-year period, until November 1, 2003.[15] On November 1, 2003, the pilot was extended for an additional one-year period until November 1, 2004.[16] In light of the evolving nature of the Nasdaq market and unlisted trading of Nasdaq/NM securities, the Exchange now requests another extension of the current pilot program, through May 1, 2005. The Exchange is not requesting approval of any changes to the pilot in this submission.

Under the pilot program, specialists must continue to accept agency market orders[17] or marketable limit orders, but only for orders of 100 to 5099 shares in Nasdaq/NM securities. This threshold order acceptance requirement is referred to as the ''auto acceptance threshold.'' Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. Specialists are required to automatically execute Nasdaq/NM orders in accordance with certain amendments to the pilot program that were approved by the Commission.[18]

The pilot program has no minimum auto execution threshold for Nasdaq/NM securities. When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the size of the specialist's quote are executed automatically (in an amount up to the size of the specialist's quote). Orders of a size greater than the specialist's quote are automatically executed up to the size of the specialist's quote, with the balance of the order designated as an open order in the specialist's book, to be filled in accordance with the Exchange's rules for manual execution of orders for Nasdaq/NM securities. Such rules dictate that the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Orders for securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system generates an autoquote at an increment away from the NBBO for 100 shares.

When the specialist is not quoting a Nasdaq/NM security at the NBBO, an order that is of a size less than or equal to the auto execution threshold designated by the specialist will execute automatically at the NBBO price up to the size of the auto execution threshold. Orders of a size greater than the auto execution threshold will be designated as open orders in the specialist's book and manually executed, unless the order-sending firm previously has advised the specialist that it elects partial automatic execution, in which event the order will be executed automatically up to the size of the auto execution threshold, with the balance of the order to be designated as an open order in the specialist's book.

Whether the specialist is quoting at the NBBO or not, ''oversized'' orders, *i.e.*, orders that are of a size greater than the auto acceptance threshold of 5099 shares (as designated by the specialist), are not subject to the foregoing requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule is consistent with Section 6(b) of the Act,[19] generally, and Section 6(b)(5) of the Act[20] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

C. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

D. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and subparagraph (f)(6) of Rule 19b–4[22] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notification requirement and the 30-day operative delay. The Commission believes that waiving the 5-day pre-filing notification requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.[23] The Commission notes that waiver of the 5-day pre-filing requirement and acceleration of the operative date will prevent the Exchange's pilot program relating to the trade of Nasdaq/NM securities from lapsing, and will allow the current rules to remain effective.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[15] See Securities Exchange Act Release No. 46932 (November 29, 2002), 67 FR 72990 (December 9, 2002).

[16] *See* Securities Exchange Act Release No. 48742 (November 3, 2003), 68 FR 63829 (November 10, 2003).

[17] The term ''agency order'' means an order for the account of a customer, but does not include professional orders, as defined in CHX Rules, Art. XXX, Rule 2, Interpretation and Policy .04. The rule defines a ''professional order'' as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[18] *See* Securities Exchange Act Release No. 44778 (September 7, 2001), 66 FR 48075 (September 17, 2001).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4.

[23] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Electronic Comments

• Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2004–37 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–37 and should be submitted on or before November 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3075 Filed 11–8–04; 8:45 am]

BILLING CODE 8010–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50619; File No. SR-CHX–2003–07]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto Relating to Out-of-Range Execution Rules

November 2, 2004.

On March 20, 2003, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to amend CHX Article XX, Rule 37, which governs, among other things, ''out-of-range'' executions.[3] The Exchange amended the proposal on March 10, 2004,[4] and September 15, 2004.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 29, 2004.[6] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act[8] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

CHX Article XX, Rule 37, governs the Exchange's Midwest Automated Execution (''MAX'') system and its SuperMAX 2000 system. Currently, Rule 37 contains provisions stating that neither system shall automatically execute an order if the execution would set a new high or new low for the day compared to the primary market price. If an out-of-range execution would result, the order is deemed to have been submitted with a request for a stop and will be sent to a CHX specialist for manual handling. This proposal would eliminate these provisions, thereby allowing MAX and SuperMAX 2000 to effect automatic executions that may establish new highs or new lows for the day. CHX believes that these provisions are no longer necessary because, with the advent of decimal pricing and the increase in trading volume at regional exchanges such as CHX, an out-of-range execution is more readily seen by customers as reflecting the current market for the security.

The out-of-range provisions in Rule 37 were designed to assist specialists in providing customers primary market price protection and to provide those customers an opportunity for price improvement by offering a stop. Although the Commission found these provisions to be consistent with the Act,[9] it does not believe that the Act compels CHX to offer this particular form of investor protection. Therefore, the Commission believes that it is consistent with the Act for CHX to delete these provisions, thereby allowing its automatic execution systems to establish new highs and new lows for a security.

Although deleting the provisions that treat orders that would result in out-of-range executions as if they had a request for a stop, certain of CHX's other rules contain references to the practice of stopping stock.[10] CHX has represented that it is appropriate to clarify whether the practice of stopping stock should be permitted on the Exchange. If the Exchange's management, member committees, and Board of Governors determine that the practice of stopping stock on the Exchange should be prohibited, the Exchange would propose a separate rule change to the Commission. On the other hand, if the Exchange determines that it remains appropriate for CHX specialists to stop stock in certain limited circumstances, CHX has represented that it would

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''out-of-range'' execution is an execution that would create a new high or new low for the day when compared to the primary market range.

[4] *See* letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 10, 2004 (''Amendment No. 1''). Amendment No. 1 clarified the purpose and effects of the proposal.

[5] *See* letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 13, 2004 (''Amendment No. 2''). Amendment No. 2 replaced the original proposal and Amendment No. 1 in their entirety.

[6] *See* Securities Exchange Act Release No. 50417 (September 21, 2004), 69 FR 58208.

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 36401 (October 20, 1995), 60 FR 54893 (October 26, 1995).

[10] *See* CHX Article XX, Rules 28 and 37(b)(2).

propose a rule change to the Commission defining the circumstances under which stock may be stopped on the Exchange and specifying appropriate conduct by CHX specialists.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–2003–07), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3081 Filed 11–8–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50621; File No. SR–NASD–2004–151]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Making Technical Modifications to the NASD Trade Reporting Rules

November 2, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(3) thereunder,[4] which renders the rule effective upon Commission receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to make technical modifications to the NASD trade reporting rules. These modifications do not in any way alter members' trade reporting obligations. The changes merely reflect technical language changes necessitated by the fact that SR–NASD–2004–076 (the ''name change'' filing'') [5] was filed without including the language changes previously approved as part of SR–NASD–2003–159.[6] In addition, the filing makes two technical corrections to the text of NASD Rules 5430(b)(10) and 6620(e)(5) to correct placement errors made in SR–NASD–2004–076.[7] The text of the proposed rule change is available at the NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to make technical modifications to the NASD trade reporting rules. These modifications do not in any way alter members' trade reporting obligations. The changes merely reflect technical language changes necessitated by the fact that SR–NASD–2004–076 [8] was filed without including the language previously approved as part of SR–NASD–2003–159.[9]

On April 19, 2004, the Commission approved SR–NASD–2003–159,[10] which filing created several new trade report modifiers and expanded the use of certain existing modifiers. For example, Nasdaq created the .ST modifier, which it will attach to late reports of pre-open and after-hours trades. The filing also proposed expanding use of the .W modifier to identify Stop Stock Transactions, and allowing the .PRP modifier to be used for exchange-listed securities. These modifications pertain only to reports submitted to Nasdaq's Automated Confirmation Transaction Service (''ACT''), and do not affect reports submitted to the NASD's alternative display facility. The appropriate language changes were included in the filing—SR–NASD–2003–159.[11]

Subsequent to the Commission approving SR–NASD–2003–159, Nasdaq filed, as effective upon filing, SR–NASD–2004–076,[12] re-naming certain Nasdaq systems. For example, Nasdaq's trade reporting system and its execution system were known as ACT and SuperMontage, respectively. SR–NASD–2004–076 [13] eliminated the individual names of these systems, which are referred to collectively now as the Nasdaq Market Center. However, Nasdaq deliberately did not incorporate in the name-change filing the rule language changes approved in SR–NASD–2003–159 [14] because, at that time, there were some questions as to when, or if, some of the new modifiers would be implemented.

The .ST modifier, while approved by the Commission, could not be implemented until the respective participants of the Nasdaq UTP Plan and Consolidated Tape Association Plan (''CTA Plan'') approved the changes, which approval had not been obtained when the name-change filing was submitted. Nasdaq believed incorporating the rule language changes approved in SR–NASD–2003–159 [15] in the name-change filing would create confusion because the language was not effective.

Since the filing of SR–NASD–2004–076,[16] Nasdaq has obtained approval from the Nasdaq UTP Plan and CTA Plan participants to implement the .ST modifier and other modifiers approved in SR–NASD–2003–159.[17] Because of these developments, Nasdaq believes it is appropriate to include the language associated with these modifiers in the NASD rules. However, given that implementation of some of the changes will be delayed for an additional period of time, Nasdaq is adding footnotes after affected text to indicate that the rule

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 7 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] Securities Exchange Act Release No. 50074 (July 23, 2004), 69 FR 45866 (July 30, 2004).

[6] Securities Exchange Act Release No. 49581 (April 19, 2004), 69 FR 22578 (April 26, 2004).

[7] *See* footnote 5, *supra.*

[8] *Id.*

[9] *See* footnote 6, *supra.*

[10] *Id.*

[11] *Id.*

[12] *See* footnote 5, *supra.*

[13] *Id.*

[14] *See* footnote 6, *supra.*

[15] *Id.*

[16] *See* footnote 5, *supra.*

[17] *See* footnote 6, *supra.*

language modifications will become effective at a later date. These footnotes were not included in SR–NASD–2003–159,[18] and thus are new language being added by the current filing.

Nasdaq also is adding new language to avoid confusion about when the time of execution must be included on all reports submitted to the Nasdaq Market Center. In SR–NASD–2003–159,[19] the Commission approved Nasdaq's proposal to require the time of execution on all reports submitted to the Nasdaq Market Center, but Nasdaq also requested that the effective date of this obligation be delayed for one year after Commission approval. The filing contained the changes to the NASD rules that would be appropriate when the obligation is effective. For example, Nasdaq proposed removing language that indicated the time of execution is necessary only when a trade is reported late, and added language indicating that the time of execution is necessary on all reports. Including these language changes in the name-change filing also would have created confusion because the actual effective date of the obligation is not until April 25, 2005. To prevent such confusion, Nasdaq is adding interpretive material indicating that members will be required to provide the time of execution on all trade reports beginning on April 25, 2005, and that the necessary language changes will be made to the NASD rules at a later time.

Finally, Nasdaq is making non-substantive changes to NASD Rules 5430(b)(10) and 6620(e)(5) to correct text placement errors made in SR–NASD–2204–076.[20] In particular, the language of section (10) of NASD Rule 5430(b) will be moved in its entirety to its correct location under subparagraph (a) of that same rule in conformity with SR–NASD–2003–154,[21] the rule filing that created it. For NASD Rule 6620, Nasdaq proposes to remove the incorrectly placed language of subparagraph (e)(5) that duplicates the correct rule language already in place in subparagraph (b)(5) of that same rule.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[22] in general, and with Section 15A(b)(6) of the Act,[23] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. Nasdaq believes the proposal is consistent with these obligations because it consolidates the rule language changes of two previously approved NASD filings and clarifies the effective date of certain of the proposals.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act,[24] and Rule 19b–4(f)(3) thereunder,[25] in that it is concerned solely with the administration of the self-regulatory organization.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–151 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–151. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–151 and should be submitted on or before November 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3074 Filed 11–8–04; 8:45 am]

BILLING CODE 8010–01–P

[18] *Id.*

[19] *Id.*

[20] *See* footnote 5, *supra.*

[21] 21 Securities Exchange Act Release No. 48823 (November 21, 2003), 68 FR 67249 (December 1, 2003).

[22] 15 U.S.C. 78o–3.

[23] 15 U.S.C. 78o–3(b)(6).

[24] 15 U.S.C. 78s (b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(3).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50627; File No. SR–NASD–2004–163]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Extension of Pilot for Bond Trade Dissemination Service (''BTDS'') Professional Delayed-Time Data Display Fee

November 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 27, 2004, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. The NASD has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 7010(k)(3)(A)(ii) to extend the pilot program for the Bond Trade Dissemination Service (''BTDS'') Professional Delayed-Time Data Display Fee for the Trade Reporting and Compliance Engine (''TRACE''), prior to its expiration on October 31, 2004, for nine months through July 31, 2005. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

7010. System Services

(a) through (j) No change.

(k) Trade Reporting and Compliance Engine

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine (''TRACE''):

System fees	Transaction reporting fees	Market data fees
Level I Trade Report Only Web Browser Access—$20/month per user ID.	Trades up to and including $200,000 par value—$0.475/trade; Trades between $201,000 and $999,999 par value—$0.002375 times the number of bonds traded/trade; Trades of $1,000,000 par value or more—$2.375/tradeBTDS Professional Real-Time Data Display—$60/month per terminal, exempt.	BTDS Professional Delayed-Time Data Display—$15/month per terminal.
Level II Full Service Web Browser Access—$80/month per user ID.		BTDS Internal Usage Authorization—$500/month per application/service for Real-Time and Delayed-Time Data.
		BTDS External Usage Authorization—$1,000/month per application/service for Real-Time and Delayed-Time Data.
CTCI/Third Party—$25/month/per firm	Cancel/Correct—$1.50/trade	BTDS Non-Professional Real-Time Data Display—$1/month per terminal.
	''As of'' Trade Late—$3/trade	

(1) through (2) No change.

(3) Market Data Fees

Professionals and non-professionals may subscribe to receive Real-Time and Delayed-Time TRACE data disseminated by NASD in one or more of the following ways for the charges specified. Members, vendors and other redistributors shall be required to execute appropriate agreements with NASD.

(A) Professional Fees.

Professionals may subscribe for the following:

(i) No change.

(ii) For a pilot period commencing February 1, 2004, and lasting [until October 31, 2004,] *through July 31, 2005,* BTDS Professional Delayed-Time Data Display Fee of $15 per month, per terminal charge for each interrogation or display device receiving Delayed-Time TRACE transaction data; provided, that subscribers to the BTDS Professional Real-Time Data Display Fee described above shall not be charged this additional fee. Subject to the execution of appropriate agreements with NASD, certain summary market information of Delayed-Time TRACE transaction data may be published or distributed by newspapers, press associations, newsletters, or similar media sources without charge.

(iii) through (iv) No change.

(B) through (D) No change.

(l) through (u) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NASD charges a BTDS Professional Delayed-Time Data Display Fee of $15.00 per month, per terminal, for each interrogation or display device receiving Delayed-Time TRACE transaction data under Rule 7010(k)(3)(A)(ii). The fee was established for a pilot period, which will expire on October 31, 2004. NASD is proposing to extend the pilot program and the $15.00 fee for the BTDS Professional Delayed-Time Data Display through July 31, 2005. NASD is not proposing to revise the fee during the extended pilot period.

NASD is proposing to extend the pilot program because it intends to undertake a comprehensive review of TRACE fees and wants to evaluate the BTDS Professional Delayed-Time Data Display Fee as part of this review.

As discussed below, NASD is filing the proposed rule change for immediate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NASD asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

effectiveness, with an implementation date of October 29, 2004.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[6] which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD is proposing to extend the pilot program for the BTDS Professional Delayed-Time Data Display Fee through July 31, 2005, because NASD intends to undertake a comprehensive review of TRACE fees and wants to evaluate the BTDS Professional Delayed-Time Data Display Fee as part of this review.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has asked the Commission to waive the 30-day operative delay. The Commission hereby grants this request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the nine-month extension of the pilot program for the BTDS Professional Delayed-Time Data Display Fee allows professional market participants to continue to access TRACE data at a discounted rate during a transitional period during which more TRACE data will become available.[9] NASD has also requested that the Commission waive the pre-filing notice requirement of at least five business days (or such shorter time as designated by the Commission).[10] The Commission hereby grants NASD's request to waive the pre-filing requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-NASD–2004–163 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and

Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–NASD–2004–163. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–163 and should be submitted on or before November 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–3079 Filed 11–8–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78o–3(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50625; File No. SR–NYSE–2004–41]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Thereto To Amend Section 303A of the NYSE Listed Company Manual Relating to Corporate Governance

November 3, 2004.

I. Introduction

On August 3, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–NYSE–2004–41) to amend certain provisions of Section 303A of the NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Listed Company Manual (''Listed Company Manual'') regarding corporate governance standards for companies listed on the Exchange. On August 30, 2003, the NYSE submitted Amendment No. 1 to the proposal.[3] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on September 8, 2004.[4] The Commission received ten comment letters on the proposed rule change.[5] On October 28, 2004, the NYSE filed Amendment No. 2 to the proposed rule change.[6] On November 2, 2004, the NYSE filed Amendment No. 3 to the proposed rule change.[7] This order approves the proposed rule change, as amended by Amendment Nos. 1, 2, and 3. The Commission is granting accelerated approval of Amendment Nos. 2 and 3, and is soliciting comments from interested persons on those amendments.

II. Description of the Proposed Rule Change

On November 4, 2003, the Commission approved Section 303A of the Listed Company Manual, which sets out the Exchange's corporate governance requirements applicable to listed companies.[8] In the instant proposal, the Exchange proposes certain clarifying and substantive changes to Section 303A, described in detail below.[9]

Definition of Independent Director

Section 303A.02 of the Listed Company Manual sets forth a definition of ''independent director'' for purposes of the Exchange's corporate governance standards for listed companies, which, among other things, includes a series of bright line tests that directors must satisfy in order to be eligible to be deemed independent for purposes of board and committee membership. Many of the proposed changes relate to these independence tests.

As an initial matter, the Exchange proposes to amend Section 303A.02(a) of the Listed Company Manual to clarify that companies are required to identify which of their directors have been deemed independent. The Exchange also proposes to amend Section 303A.02(b)(i) to add a definition of the term ''executive officer,'' and to amend other provisions throughout Section 303A by including use of this term.

Additionally, the Exchange proposes to amend the Commentary to Sections 303A.02(b)(i) and (ii), which set forth bright line tests of independence for directors who are, or whose family members are, current or former employees or recipients of compensation from a listed company, to state that service as an interim executive officer (and not only an interim Chairman or CEO, as currently provided) will not trigger the look-back provisions in those sections.

The Exchange further proposes to amend Section 303A.02(b) to reformulate the wording of the bright line independence tests to provide more clarity with respect to how the applicable look-back periods should be applied. In particular, with respect to Section 303A.02(b)(ii), the Exchange proposes to amend the rule text to state that a director is not independent if the director ''has received or has an immediate family member who has received, during any twelve-month period within the last three years, more than $100,000 in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service).'' [10]

The NYSE is also proposing a change to Section 303A.02(b)(iii), the bright line test relating to relationships of a director or the director's immediate family member to the auditor of the company (''Director-Auditor Relationship Test''). Section 303A.02(b)(iii) currently provides that: ''A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company is not 'independent' until three years after the end of the affiliation or the employment or auditing relationship.'' An ''immediate family member'' is defined currently for all the independence tests in Section 303A.02(b) to include ''a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home.''

The Exchange proposes to revise this standard to provide that a director is not independent if: ''(A) The director or an immediate family member is a current partner of a firm that is the company's

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[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 27, 2004 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 50298 (August 31, 2004), 69 FR 54328 (''Notice'').

[5] *See* Letters to Jonathan G. Katz, Secretary, Commission, from: Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, dated September 15, 2004 (''CII letter''); Dale McCormick, Maine State Treasurer, dated September 17, 2004 (''Maine Treasurer Letter''); Richard Curtis, Executive Director, Highway Patrol Retirement System, William Estabrook, Executive Director, Ohio Police and Fire Pension Fund, Laurie Hacking, Executive Director, Public Employees Retirement System of Ohio, Damon Asbury, Executive Director, State Teachers Retirement System of Ohio, James Winfree, Executive Director, School Employees Retirement System of Ohio, Keith Overly, Executive Director, Public Employees Deferred Compensation, dated September 21, 2004 (''Ohio Retirement System Letter''); Colin Melvin, Director-Corporate Governance, Hermes Investment Management Limited, dated September 22, 2004 (''Hermes Letter''); Joseph M. Huber, Senior Corporate Counsel, Federated Investors, Inc., dated September 27, 2004 (''Federated Letter''); Henry H. Hubble, Vice President, Investor Relations and Secretary, Exxon Mobil Corporation, dated September 28, 2004 (''ExxonMobil Letter''); Steve Odland, Chairman, President and CEO, AutoZone, Inc., and Chairman, Corporate Governance Task Force, Business Roundtable, dated September 29, 2004 (''Business Roundtable Letter''); Kay R.H. Evans, Executive Director, Maine State Retirement System, dated September 29, 2004 (''Maine Retirement System Letter''); Michael J. Holliday, Chair of the Committee, Committee on Securities Regulation of the Business Law Section of the New York State Bar Association, dated September 29, 2004 (''NYSBA Committee Letter''); and letter to William H. Donaldson, Chairman, Commission, from The Honorable Diana DeGette, The Honorable Edward Markey, and The Honorable Janice Schakowsky, Members of Congress, dated October 14, 2004 (''Representatives' Letter'').

[6] *See* letter from Mary Yeager, Assistant Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 28, 2004, and accompanying Form 19b–4 (''Amendment No. 2''). In Amendment No. 2, the NYSE withdrew a proposed change to the Commentary to Section 303A.02(b)(iii) that would have revised the definition of ''immediate family member'' for purposes of the bright line test relating to a director's relationships with the listed company's auditor. *See also* Section IV. below.

[7] *See* letter from Mary Yeager, Assistant Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 2, 2004 (''Amendment No. 3''). In Amendment No. 3, the NYSE proposed to give listed companies until their first annual meeting after June 30, 2005 to replace a director who was independent under the NYSE's existing bright line test relating to relationships of a director or the director's immediate family member to the auditor of the company, but would not be under the revised rule. As originally proposed, the extension would have been granted until the first annual meeting after January 1, 2005. Amendment No. 3 also proposes to include this provision in the text of Section 303A.

[8] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR–NYSE–2002–33).

[9] The proposed rule change also includes various technical and stylistic revisions to the language of Section 303A. *See* notice.

[10] This language would replace the current rule text, which provides: ''A director who receives, or whose immediate family member receives, more than $100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is not independent until three years after he or she ceases to receive more than $100,000 per year in such compensation.''

internal or external auditor; (B) the director is a current employee of such a firm; (C) the director has an immediate family member who is a current employee of such a firm and who participates in the firm's audit, assurance or tax compliance (but not tax planning) practice; or (D) the director or an immediate family member was within the last three years (but is no longer) a partner or employee of such a firm and personally worked on the listed company's audit within that time.''

In the proposed rule change as published in the Notice, NYSE also proposed to revise the definition of ''immediate family member'' for purposes of the Director-Auditor Relationship Test. In Amendment No. 2, NYSE withdrew this proposed revision.[11]

As amended by Amendment No. 3, the proposal would give listed companies until their first annual meeting after June 30, 2005 to replace a director who was independent under the NYSE's existing Director-Auditor Relationship Test, but would not be under the revised rule.[12]

The Exchange proposes to revise the Commentary to Section 303A.02(b)(v), the bright line test regarding, among other things, the independence of a director who held, or whose immediate family held, certain positions in a company that received payments from the listed company. The revised language would state that contributions made to tax exempt organizations shall not be considered ''payments'' under the test. The proposed change is meant to clarify that payments to a charitable organization related to a listed company's business relationship with that organization would be subject to the test.[13]

Requirements for Non-Management Directors

The Exchange proposes to revise Section 303A.03(b) of the Listed Company Manual to clarify that a non-management director must preside over each executive session of the non-management directors, although the same director is not required to preside at all executive sessions of the non-management directors.[14]

Requirements for Compensation Committees

The Exchange proposes to revise Section 303A.05(b)(i)(B) of the Listed Company Manual to clarify, among other things, that the non-CEO compensation regarding which a compensation committee must make recommendations to its board is that of the executive officers. The Exchange also proposes to make clear that nothing in the aforementioned provision is intended to preclude the board from delegating its authority over the matters that this provision addresses to the compensation committee.

Duties of the Audit Committee

The Exchange proposes to revise Section 303A.07(c)(iii)(B) of the Listed Company Manual to add that the audit committee of a listed company must meet to review the company's financial statements and must review the company's specific Management's Discussion and Analysis (''MD&A'') disclosures.

Disclosures of Guidelines and Codes and Methods of Communication

The Exchange proposes to amend Sections 303A.03, .09 and .10 of the Listed Company Manual to specify that the relevant disclosures must be in the listed company's annual proxy statement (or, if the company does not file a proxy statement, then in the Form 10–K).

Foreign Private Issuer Disclosures

The Exchange proposes to revise Section 303A.11 of the Listed Company Manual to clarify that foreign private issuers are required to provide disclosure of the significant ways in which their actual corporate governance practices (as opposed to their home country practices, as in the current version) differ from those required of domestic companies under Section 303A.

Certifications and Affirmations

Section 303A.12 of the Listed Company Manual provides that each listed company CEO must certify to the NYSE each year that he or she is not aware of any violation by the company of the NYSE corporate governance listing standards. The Exchange proposes to amend this provision by adding the phrase ''qualifying the certification to the extent necessary.'' Any qualifications would need to be included in the disclosure of the certification required under the provision. The Exchange also proposes to add new Section 303A.12(c) to require that a listed company submit annual Written Affirmations to the NYSE, in a form specified by the Exchange, regarding details of compliance or non-compliance with Section 303A, as well as interim Written Affirmations each time a change occurs to the board of any of the committees of the company that are subject to the provisions of Section 303A.

The proposed rule change would also amend the General Application section of Section 303A to specify that listed open-end management investment companies (which can be listed as Investment Company Units, more commonly known as Exchange Traded Funds or ETFs), foreign private issuers, and preferred and debt listed companies (to the extent such companies must comply with Section 303A.06 of the Listed Company Manual) would be required to submit the annual and interim Written Affirmations.

III. Summary of Comments on the Proposed Rule Change

The Commission received ten comment letters on the proposed rule change. Four comment letters generally supported the objective of the proposed amendments, or specifically the proposed changes to the Director-Auditor Relationship Test,[15] although two of these commenters recommended revisions with respect to certain aspects of the proposal,[16] while a third urged the Exchange to consider further input before finalizing the amendments.[17] Six comment letters opposed the proposal, most specifically with respect to the Director-Auditor Relationship Test.[18] The following is a summary of comments set forth by topic:

A. Proposed Changes to Director-Auditor Relationship Test

Four comment letters supported the proposed changes to the Director-Auditor Relationship Test.[19] One commenter, for example, believed that the amendments are appropriate because ''they focus on those relationships that have the potential to impact a director's independence.'' [20] Two commenters expressed the view

[11] *See* Amendment No. 2.

[12] As originally proposed, the extension would have been granted until the first annual meeting after January 1, 2005. *See* Amendment No. 3, which also proposes to include this provision in the text of Section 303A.

[13] *See* notice.

[14] *See* proposed rule text as published in notice for further proposed clarifications in this subsection.

[15] *See* Business Roundtable Letter, ExxonMobil Letter, Federated Letter, NYSBA Committee Letter.

[16] *See* Business Roundtable Letter, NYSBA Committee Letter.

[17] *See* ExxonMobil Letter.

[18] *See* CII Letter, Hermes Letter, Ohio Retirement Systems Letter, Maine Retirement Systems Letter, Maine Treasurer Letter.

[19] *See* Business Roundtable Letter, ExxonMobil Letter, Federated Letter, NYSBA Committee Letter. Some of the comments related to the proposed revision to the definition of ''immediate family member,'' which NYSE has withdrawn. *See supra* note 6.

[20] *See* Business Roundtable Letter.

that the changes, or aspects of them, would harmonize the NYSE's standards more closely with those of other markets.[21]

One commenter favoring the changes stated that ''[b]ecause the current standard is so broadly drafted, it reaches a wide range of individuals, including individuals who never served on the listed company's audit.'' [22] The commenter noted that deeming a director as not independent based on this standard results in the loss of the director's ability to serve on the three key board committees, and added that the pool of accounting firms with the necessary expertise and resources to audit the financial statements of large, multinational companies is limited, and listed companies have limited options when selecting an auditor.

Commenters supporting the proposed changes believed that the amended standard would still reach those family member relationships that are the most likely to impact a director's independence,[23] and that the greater coverage of the current standard does not reach any relationship that is likely to meaningfully affect independence.[24] One commenter argued that ''it seems strange that the current standard could deem directors not independent even though the auditor with a similar relationship to the company was deemed independent under the test applicable to it relative to the company.'' [25]

Six comment letters, in contrast, opposed the proposed changes to the Director-Auditor Relationship Test,[26] believing it would weaken corporate governance standards and investor protections [27] and erode investor confidence.[28] These commenters believed, for example, that the changes would allow a director to qualify as independent notwithstanding ''close relationships and/or employment ties'' [29] and ''obvious conflicts.'' [30]

In the view of some commenters, the proposed changes not only do not advance the goal of reducing corporate wrongdoing, ''but could actually precipitate more malfeasance by opening the door to conflicts of interest, which could ultimately compromise a director's ability to protect the interest of shareholders.'' [31]

Specifically with regard to the proposed change to the look-back requirement of the test, which would make it applicable only to former partners and employees of an auditing firm who worked on the audit, some commenters believed that the change would only invite more conflicts of interest.[32] Commenters opposing the proposal further believed that justifying it as necessary in order to make NYSE's rules consistent with those of The Nasdaq Market (''Nasdaq'') and the American Stock Exchange (''Amex'') was not appropriate,[33] and that NYSE should be enforcing the toughest standards rather than matching weaker ones.[34]

With regard to the proposed change in the definition of ''immediate family member'' for this test—subsequently withdrawn [35]—commenters noted that, under the proposal, a director would not be disqualified if his or her parent, child, sibling, mother- or father-in-law, son- or daughter-in-law, or brother- or sister-in-law, was, for example, a partner in the listed company's auditing firm.[36] Some commenters expressed concern that the change ''would only work toward making directors less-independently minded, not more so.'' [37] These and other commenters believed that the proposed change would diverge significantly from other exchanges' standards.[38]

''The audit process is sacrosanct and should be above suspicion,'' stated one commenter generally.[39] ''Any analysis,'' stated another, ''should focus on whether directors or their relatives (broadly defined) have or have had an employment connection to the audit firm—regardless of their title or specific role at the firm.'' [40]

Some commenters also questioned why the NYSE is proposing to amend listing standards adopted less than a year ago after substantial discussion,[41] and believed that the current standards ''have not been in place long enough to be declared unworkable.'' [42]

B. Proposed Amendment Concerning Look-Back Period for Compensation Test

One commenter expressed concern regarding the proposed change to clarify that the look-back prohibition on an independent director receiving more than $100,000 in compensation from the listed company per year applies to any twelve-month period within the last three years.[43] This commenter believed that a ''rolling 12-months'' test would entail an amount of work and burden of research for listed companies that is unwarranted for any incremental benefit it might provide. The commenter recommended that the test instead refer to payments in any of the last three fiscal years, following the format in the NYSE's test of independence with respect to payments made by or received from a company where a director is an employee, as well as in Commission rules for similar disclosure of transactions with directors and officers.

C. Proposed Amendment Concerning Audit Committee Responsibilities

One commenter addressed the proposed changes to the rules regarding audit committee responsibilities.[44] The commenter believed that the provision as proposed to be amended could be read to suggest that the audit committee should have greater involvement in reviewing MD&A disclosures relative to earnings releases. The commenter stated that this suggestion does not accurately reflect the current practices of audit committees, many of which, consistent with emerging best practices, review individual earnings releases prior to publication.

Additionally, the commenter maintained that the meaning of the proposal to require review of ''specific'' disclosures under MD&A is unclear. The commenter believed the proposed amendments should be accordingly modified.

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[21] *See* Federated Letter, Business Roundtable Letter. One commenter added that the enumeration of specific relationships in the text of the standard would provide clarity to listed companies in applying the standard. Business Roundtable Letter.

[22] *See* Business Roundtable Letter.

[23] *Id.*

[24] *See* NYSBA Committee Letter.

[25] *Id.*

[26] *See* CII Letter, Hermes Letter, Ohio Retirement Systems Letter, Maine Retirement Systems Letter, Maine Treasurer Letter; Representatives' Letter. Some of the comments related to the proposed revision to the definition of ''immediate family member,'' which NYSE has withdrawn. *See supra* note 6.

[27] *See* CII Letter, Maine Treasurer Letter, Ohio Retirement Systems Letter, Representatives' Letter.

[28] *See* CII Letter, Hermes Letter, Ohio Retirement Systems Letter.

[29] *See* Maine Retirement Letter.

[30] *See* Maine Treasurer Letter.

[31] *See* Representatives' Letter.

[32] *See* Representatives' Letter.

[33] *See* Ohio Retirement Systems Letter.

[34] *See* CII Letter. *See also* Representatives' Letter.

[35] *See supra* note 6.

[36] *See* CII Letter, Maine Treasurer Letter, Ohio Retirement Systems Letter.

[37] *See* Representatives' Letter.

[38] *Id. See also* CII Letter, Ohio Retirement Systems Letter.

[39] *See* Hermes Letter.

[40] *See* CII Letter.

[41] *See* CII Letter, Maine Treasurer Letter.

[42] *See* Maine Retirement Systems Letter.

[43] *See* NYSBA Committee Letter.

[44] *See* Business Roundtable Letter.

D. Additional Comments

One commenter recommended additional changes to clarify other aspects of the proposal.[45] Some commenters believed that the new definition of ''immediate family member'' that NYSE had proposed for the Director-Auditor Relationship Test should be used uniformly for all the director independence tests in Section 303A.[46] In addition, some commenters took the opportunity to suggest other changes, or raise concerns with respect to other aspects of the NYSE's corporate governance listing standards, that are beyond the scope of the instant proposal. Finally, one commenter believed there was need for more general comment on the standards, and urged the Exchange to consider a broad range of input before finalizing the proposed amendments.[47]

IV. Amendment Nos. 2 and 3 to the Proposed Rule Change

In Amendment No. 2, the NYSE withdrew the proposed revision to the definition of ''immediate family member'' for purposes of the Director-Auditor Relationship Test, and addressed comments received concerning the proposed rule change.

With respect to the comments relating to the Director-Auditor Relationship Test, the Exchange referred to its statement in its original proposal noting that a number of NYSE listed companies are finding directors precluded from independence because of past personal or family member affiliation with an auditing firm, even though the person involved never worked on the listed company account. The Exchange stated that during the 2004 proxy season, it was contacted by a number of listed companies that noted what it believes is the problematic nature of the broad application of the current test, and provided examples of cases that arose in which directors were precluded from being deemed independent under the current Director-Auditor Relationship Test due to what the Exchange regards as its unintended broadness.

The NYSE stated that, in considering alternative approaches with respect to immediate family members, it noted that the Nasdaq and Amex listing standards are more targeted than the current NYSE standard, implicating, for example, only former partners or employees of the audit firm who worked on the company's audit. The NYSE stated that because the Nasdaq and Amex outside auditor bright line tests were subject to Commission review and public comment, the Exchange felt that adapting its bright line test to reflect their approach would be an appropriate and non-controversial change.

In response to a comment that the three-year look-back should apply to all former auditing partners and employees, as it does under the NYSE's current standard, and that a change to this standard would be ''only inviting more conflicts of interest into the corporate boardrooms,'' [48] the Exchange responded that, ''in fact, our proposal to cover all partners of the audit firm is a strengthening of its current standard, which only applies to partners or former partners who participate in the audit firm's audit, assurance or tax compliance (but not tax planning) practice.'' With respect the proposed revision to the ''immediate family member'' definition applicable to the Director-Auditor Relationship Test, NYSE noted comments supporting and opposing the proposal, and stated that, based on comments from the Commission staff and the public, it had determined to withdraw this specific amendment at this time.

Finally, the NYSE discussed comments on the additional proposed changes to Sections 303A.02(b)(ii), 303A.02(b)(v), 303A.05(b)(i)(B), 303A.07, 303A.08 and 303A.12. With regard to these comments, the NYSE stated that it will consider these suggestions as part of its ongoing review of Section 303A, but does not feel that additional clarifications or amendments to these sections are appropriate at this time.

In Amendment No. 3, NYSE revised the proposed applicability date of the amended Director-Auditor Relationship Test for certain listed companies, and included a proposed reference to this date in the text of Section 303A. NYSE stated: ''Due to this proposed tightening of the independence test and to avoid a sudden change to the status of a current director, companies will have until their first annual meeting after June 30, 2005, to replace a director who was independent under the prior test but who is not independent under the current test.''

V. Discussion

After careful consideration of the proposal and the comments received, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[49] and, in particular, with the requirements of Section 6(b) of the Act.[50] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) [51] of the Act, which requires that the rules of a national securities exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

In the Commission's view, the proposed rule change provides appropriate clarification, and, in some cases, enhancement, of several of the corporate governance listing standards contained in Section 303A of the Listed Company Manual. For example, the proposed rule change clarifies that listed companies must identify which of their directors have been deemed independent; sets forth a definition of executive officer as used in these rules; rewords the look-back test regarding compensation received by a director or immediate family member in a manner that makes it easier to understand and apply; and specifies that only contributions to a tax-exempt organization are not to be considered ''payments'' for purposes of Section 303A.02(b)(v), but not payments to such organization made in the context of a business relationship.

The proposal further requires audit committees to meet to review and discuss their companies' financial statements and to review their companies' specific MD&A disclosures; clarifies the responsibilities of compensation committees with respect to non-CEO compensation; requires more meaningful disclosure by foreign private issuers regarding how their practices differ from the practices required of domestic companies;

[45] *See* NYSBA Committee Letter. The commenter included suggestions to: add language to subsection Section 303A.02(b)(v) to clarify the treatment of payments for property or services from or to tax-exempt organizations in ordinary course commercial transactions; revise the Commentary of that subsection, in consonance with the proposed change to the text of the rule, to refer to ''each of the last three fiscal years'' rather than the ''last completed fiscal year,'' so as to avoid confusion; and revise the proposed changes to the text of Section 303A.05(b)(i)(B) to clarify the extent to which determinations of non-CEO compensation may be delegated by a company's board to its compensation committee. The commenter also urged that, for the sake of clarity, NYSE use a different phrase to define family member for purposes of the Director-Auditor Relationship Test.

[46] *See* ExxonMobil Letter, NYSBA Committee Letter.

[47] *See* ExxonMobil Letter.

[48] *See* Representatives' Letter.

[49] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[50] 15 U.S.C. 78f.

[51] 15 U.S.C. 78f(b)(5).

clarifies various disclosure requirements generally; and provides for the inclusion and disclosure of any qualifications to the certifications that CEOs submit to the NYSE. The addition of a provision requiring Written Affirmations from listed companies of their ongoing compliance with these standards should help assure that companies are meeting the requirements.

With respect to Section 303A.02(b)(iii), the Director-Auditor Relationship Test, the Commission notes that the proposed rule change, as amended, clarifies and tightens NYSE's standard of independence with respect to current relationships of a director or immediate family member with the listed company auditor, while more closely aligning the look-back provision of the test with similar provisions adopted by Amex and Nasdaq, which, unlike NYSE's current standard, apply a look-back test only to former partners or employees of the audit firm who personally worked on the audit.

For example, under the current NYSE standard, an immediate family member of a director who is ''affiliated with or employed in a professional capacity by'' the company's internal or external auditor would preclude the director from independence. As interpreted by the NYSE, under the current standard an immediate family member who is a current partner, but does not act in a ''professional capacity'' at the audit firm, would not impact the director's independence. Under the proposed revision, however, a director would not be considered independent if any of the director's immediate family members is a current partner of the audit firm. With respect to family members of a director who are current employees of the auditor, the proposed rule change clarifies, in consonance with NYSE's response to Frequently Asked Questions regarding its current rule, that the director is precluded from independence only if the family member employee participates in the firm's audit, assurance, or tax compliance (but not tax planning) practice.

With respect to the look-back provision of the test, NYSE's current standard precludes a director from being considered independent if the director was affiliated with or employed by the auditor, or the director's immediate family member was affiliated with or employed in a professional capacity by the auditor, until three years after the end of the affiliation or relationship. NYSE is proposing to revise this provision so that the director is precluded from independence only when the director or his or her immediate family member was a partner or employee of the audit firm and personally worked on the listed company's audit within the three-year look back period. As noted by the NYSE, the Commission has previously approved analogous look-back provisions in the director-auditor relationship tests of other markets as consistent with the Act. The Commission further believes that approval of the proposed change in the NYSE standard is in accord with principles of fair competition and equal regulation of markets.

The Commission finds good cause for approving Amendment Nos. 2 and 3 before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The only revision to the original proposal made by Amendment No. 2 was the withdrawal of a proposed change to the definition of ''immediate family member'' for purposes of the Director-Auditor Relationship Test. The amendment proposes no new changes to the corporate governance standards for listed companies and raises no new regulatory issues. In Amendment No. 3, the NYSE proposed to give listed companies until their first annual meeting after June 30, 2005, rather than their first meeting after January 1, 2005, as set forth in the original proposal, to replace a director who was independent under the current test but who would not be independent under the revised test. The amendment also would include this extension in the text of Section 303A. The Commission believes this extension of time for listed companies that based decisions on the current test of independence is reasonable, and acceleration of the amendment should help facilitate planning by listed companies.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 2 and 3 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–41 and should be submitted on or before November 30, 2004.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[52] that the proposed rule change (SR–NYSE–2004–41), as amended, be, and hereby is, approved and Amendment Nos. 2 and 3 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[53]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–3080 Filed 11–8–04; 8:45 am]

BILLING CODE 8010–01–P

[52] 15 U.S.C. 78s(b)(2).

[53] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4888]

Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV–2006) Visa Program

ACTION: Notice of Registration for the Diversity Immigrant Visa Program.

This public notice provides information on how to apply for the DV 2006 Program. This notice is issued pursuant to 22 CFR 42.33(b)(3) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(G)).

Instructions for the 2006 Diversity Immigrant Visa Program (DV–2006)

The congressionally mandated Diversity Immigrant Visa Program is administered on an annual basis by the Department of State and conducted under the terms of Section 203(c) of the Immigration and Nationality Act (INA). Section 131 of the Immigration Act of 1990 (Pub. L. 101–649) amended INA 203 to provide for a new class of immigrants known as ''diversity immigrants'' (DV immigrants). The Act makes available 50,000 permanent resident visas annually to persons from countries with low rates of immigration to the United States.

The annual DV program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. Applicants for Diversity Visas are chosen by a computer-generated random lottery drawing. The visas, however, are distributed among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to citizens of countries sending more than 50,000 immigrants to the U.S. in the past five years. Within each region, no one country may receive more than seven percent of the available Diversity Visas in any one year.

For DV–2006, natives of the following countries are not eligible to apply because they sent a total of more than 50,000 immigrants to the U.S. in the previous five years (the term ''country'' in this notice includes countries, economies and other jurisdictions explicitly listed in this notice): Canada, China (mainland-born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Russia, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible.

Application Submission Dates

Entries for the DV–2006 Diversity Visa Lottery must be submitted electronically between noon (EST) on Friday, November 5, 2004 and noon (EST) on Friday, January 7, 2005. Applicants may access the electronic Diversity Visa entry form at *http://www.dvlottery.state.gov* during the registration period beginning noon November 5, 2004. Paper entries will not be accepted. Applicants are strongly encouraged to not wait until the last week of the registration period to enter. Heavy demand may result in delays. No entries will be accepted after noon (EST) on January 7, 2005.

Requirements for Entry

Applicant must be a native of one of the countries listed. See ''List of Countries by Region Whose Natives Qualify.''

In most cases this means the country in which the applicant was born. However, there are two other ways a person may be able to qualify. First, if a person was born in a county whose natives are ineligible but his/her spouse was born in a country whose natives are eligible, such person can claim the spouse's country of birth provided both the applicant and spouse are issued visas and enter the U.S. simultaneously. Second, if a person was born in a country whose natives are ineligible, but neither of his/her parents was born there or resided there at the time of his/her birth, such person may claim nativity in one of the parents' country of birth if it is a country whose natives qualify for the DV–2006 program.

Applicants must meet either the education OR training requirement of the DV program.

An applicant must have EITHER a high school education or its equivalent, defined as successful completion of a 12-year course of elementary and secondary education; OR two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The U.S. Department of Labor's O*Net OnLine database will be used to determine qualifying work experience.

If the applicant cannot meet these requirements, he/she should NOT submit an entry to the DV program.

Procedures for Submitting an Entry to DV–2006

The Department of State will ONLY accept completed Electronic Diversity Visa Entry Forms submitted electronically at *http://www.dvlottery.state.gov* during the registration period beginning at 12 pm EST (GMT–5) on November 5, 2004 and ending at 12 pm EST (GMT–5) on January 7, 2005.

All entries by an applicant will be disqualified if more than ONE entry for the applicant is received, regardless of who submitted the entry. Applicants may prepare and submit their own entries, or have someone submit the entry for them.

Successfully registered entries will result in the display of a confirmation screen containing the applicant's name, date of birth, country of chargeability, and a date/time stamp. The applicant may print this confirmation screen for his/her records using the print function of their web browser.

Paper entries will not be accepted.

The entry will be disqualified if all required photos are not submitted. Recent photographs of the applicant and his/her spouse and each child under 21 years of age, including all natural children as well as all legally-adopted and stepchildren (except a child who is already a U.S. citizen or a Legal Permanent Resident), even if a child no longer resides with the applicant or is not intended to immigrate under the DV program, must be submitted electronically with the Electronic Diversity Visa Entry Form. Group or family photos will not be accepted; there must be a separate photo for each family member.

A digital photo (image) of each applicant, his/her spouse, and children must be submitted on-line with the EDV Entry Form. The image file can be produced either by taking a new digital photograph or by scanning a photographic print with a digital scanner.

Instructions for Submitting a Digital Photo (Image)

The image file must adhere to the following compositional specifications and technical specifications and can be produced in one of the following ways: taking a new digital image; or using a digital scanner to scan a submitted photograph.

Compositional Specifications

The submitted digital image must conform to the following compositional specifications or the entry will be disqualified. The person being photographed must directly face the camera. The head of the person should not be tilted up, down, or to the side. The head should cover about 50% of the area of the photo. The photograph should be taken with the person in front of a neutral, light-colored background.

Dark or patterned backgrounds are not acceptable. The photo must be in focus. Photos in which the person being photographed is wearing sunglasses or other items that detract from the face will not be accepted. Photos of applicants wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant. Photos of applicants with tribal or other headgear not specifically religious in nature will not be accepted. Photos of military, airline, or other personnel wearing hats will not be accepted.

Technical Specifications

The submitted digital photograph must conform to the following technical specifications or the system will automatically reject the EDV Entry Form and notify the sender.

When taking a new digital image: the image file format must be in the Joint Photographic Experts Group (JPEG) format; it must have a maximum image file size of sixty-two thousand five hundred (62,500) bytes; the image resolution must be 320 pixels high by 240 pixels wide; the image color depth 24-bit color, or 8-bit color, or 8-bit grayscale. [**Note:** Monochrome images (2-bit color depth) will not be accepted.]

Before a photographic print is scanned it must meet the following specifications: the print size must be 2 inches by 2 inches (50mm x 50mm) square; the print color image must be either in color or grayscale.

The photographic print must also meet the compositional specifications. If the photographic print meets the print size, print color and compositional specifications, scan the print using the following scanner specifications: scanner resolution must be 150 dots per inch (dpi); the image file in Joint Photographic Experts Group (JPEG) format; maximum image file size will be sixty-two thousand five hundred (62,500) bytes; the image resolution at 300 by 300 pixels; the image color depth 24-bit color or 8-bit color or 8-bit grayscale. [**Note:** Monochrome images (2-bit color depth) will not be accepted.]

Information Required for the Electronic Entry

There is only one way to enter the DV–2006 lottery. Applicants must submit an Electronic Diversity Visa Entry Form (EDV Entry Form), which is accessible only at *http://www.dvlottery.state.gov*. Failure to complete the form in its entirety will disqualify the applicant's entry. Applicants will be asked to submit the following information on the EDV Entry Form.

1. *Full Name*—Last/Family Name, First Name, Middle Name.
2. *Date of Birth*—Day, Month, Year.
3. *Gender*—Male or Female.
4. *City/Town of Birth*.
5. *Country of Birth*—The name of the country should be that which is currently in use for the place where the applicant was born.
6. *Applicant Photograph*—(See information in this notice on photo specifications).
7. *Mailing Address*—Address, City/Town, District/Country/Province/State, Postal Code/Zip Code, Country.
8. *Phone Number* (optional).
9. *E-mail Address* (optional).
10. *Country of Eligibility if the Applicant's Native Country is Different from Country of Birth*—If the applicant is claiming nativity in a country other than his/her place of birth, this information must be indicated on the entry.
11. *Marriage Status*—Unmarried, Married, Divorced, Widowed, Legally Separated.
12. *Number of Children that are Unmarried and Under 21 Years of Age*—Except children that are either U.S. legal permanent residents or American citizens.
13. *Spouse Information*—Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, Photograph.
14. *Children Information*—Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, Photograph.

Note: Entries must include the name, date and place of birth of the applicant's spouse and all natural children, as well as all legally-adopted and stepchildren, who are unmarried and under the age of 21 (except children who are already U.S. citizens or Legal Permanent Residents), even if they are no longer legally married to the child's parent, and even if the spouse or child does not currently reside with you and/or will not immigrate with you. Note that married children and children 21 years or older will not qualify for the diversity visa. Failure to list all children will result in your disqualification for the visa. (See question 11 on the list of Frequently Asked Questions.)

Selection of Applicants

Applicants will be selected at random by computer from among all qualified entries. Those selected will be notified by mail between May and July 2005 and will be provided further instructions, including information on fees connected with immigration to the U.S. Persons not selected will not receive any notification. U.S. embassies and consulates will not be able to provide a list of successful applicants. Spouses and unmarried children under age 21 of successful applicants may also apply for visas to accompany or follow to join the principal applicant. DV–2006 visas will be issued between October 1, 2005 and September 30, 2006.

In order to actually receive a visa, applicants selected in the random drawing must meet all eligibility requirements under U.S. law. Processing of entries and issuance of diversity visas to successful applicants and their eligible family members must occur by midnight on September 30, 2006. Under no circumstances can diversity visas be issued or adjustments approved after this date, nor can family members obtain diversity visas to follow to join the applicant in the U.S. after this date.

Important Notice

No fee is charged to enter the annual DV program. The U.S. Government employs no outside consultants or private services to operate the DV program. Any intermediaries or others who offer assistance to prepare DV casework for applicants do so without the authority or consent of the U.S. Government. Use of any outside intermediary or assistance to prepare a DV entry is entirely at the applicant's discretion.

A qualified entry submitted electronically directly by an applicant has an equal chance of being selected by the computer at the Kentucky Consular Center as does an entry submitted electronically through a paid intermediary who completes the entry for the applicant. Every entry received during the lottery registration period will have an equal random chance of being selected within its region. However, receipt of more than one entry per person will disqualify the person from registration, regardless of the source of the entry.

Frequently Asked Questions About DV Registration

1. What Does the Term ''Native'' Mean? Are There Any Situations in Which Persons Who Were Not Born in a Qualifying Country May Apply?

''Native'' ordinarily means someone born in a particular country, regardless of the individual's current country of residence or nationality. But for immigration purposes ''native'' can also mean someone who is entitled to be ''charged'' to a country other than the one in which he/she was born under the provisions of Section 202(b) of the Immigration and Nationality Act.

For example, if a principal applicant was born in a country that is not eligible for this year's DV program, he or she may claim ''chargeability'' to the country where his/her derivative spouse was born, but he/she will not be issued

a DV–1 unless the spouse is also eligible for and issued a DV–2, and both must enter the U.S. together on the DVs. In a similar manner, a minor dependent child can be ''charged'' to a parent's country of birth. Finally, any applicant born in a country ineligible for this year's DV program can be ''charged'' to the country of birth of either parent as long as neither parent was a resident of the ineligible country at the time of the applicant's birth. In general, people are not considered residents of a country in which they were not born or legally naturalized if they are only visiting the country temporarily or stationed in the country for business or professional reasons on behalf of a company or government. An applicant who claims alternate chargeability must indicate such information on the application for registration.

2. Are There Any Changes or New Requirements in the Application Procedures for This Diversity Visa Registration?

All DV–2006 lottery entries must be submitted electronically at *http://www.dvlottery.state.gov* between 12 pm (EST) Friday, November 5, 2004 and 12 pm (EST) Friday, January 7, 2005. No paper entries will be accepted.

The Department of State implemented an electronic registration system for last year's lottery in order to make the Diversity Visa process more efficient and secure. The Department utilizes special technology and other means to identify applicants who commit fraud for the purposes of illegal immigration or who submit multiple entries.

The DV–2006 Diversity Immigrant Visa Program registration period will run from noon Eastern Standard Time November 5, 2004 through noon Eastern Standard Time January 7, 2005.

3. Are Signatures and Photographs Required for Each Family Member, or Only for the Principal Applicant?

Signatures are not required on the Electronic Diversity Visa Entry Form. Recent and individual photos of the applicant, his/her spouse and all children under 21 years of age are required. Family or group photos are not accepted. Check the information on the photo requirements included in this notice.

4. Why Do Natives of Certain Countries Not Qualify for the Diversity Program?

Diversity visas are intended to provide an immigration opportunity for persons from countries other than the countries that send large numbers of immigrants to the U.S. The law states that no diversity visas shall be provided for natives of ''high admission'' countries. The law defines this to mean countries from which a total of 50,000 persons in the Family-Sponsored and Employment-Based visa categories immigrated to the United States during the previous five years. Each year, the U.S. Citizenship and Immigration Services (USCIS) adds the family and employment immigrant admission figures for the previous five years in order to identify the countries whose natives must be excluded from the annual diversity lottery. Because there is a separate determination made before each annual DV entry period, the list of countries whose natives do not qualify may change from one year to the next.

5. What Is the Numerical Limit for DV–2006?

By law, the U.S. diversity immigration program makes available a maximum of 55,000 permanent residence visas each year to eligible persons. However, the Nicaraguan Adjustment and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning as early as DV–99, and for as long as necessary, 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. The actual reduction of the limit to 50,000 began with DV–2000 and remains in effect for the DV–2006 program.

6. What Are the Regional Diversity Visa (DV) Limits for DV–2006?

The U.S. Citizenship and Immigration Services (USCIS) determines the DV regional limits for each year according to a formula specified in Section 203(c) of the Immigration and Nationality Act (INA). Once the USCIS has completed the calculations, the regional visa limits will be announced.

7. When Will Entries for the DV–2006 Program Be Accepted?

The DV–2006 entry period will begin on noon EST Friday, November 5, 2004 and will last for 63 days through noon EST Friday, January 7, 2005. Each year millions apply for the program during the registration period. The massive volume of entries creates an enormous amount of work in selecting and processing successful applicants. Holding the entry period during November and December will ensure successful applicants are notified in a timely manner, and will give both them and our embassies and consulates time to prepare and complete entries for visa issuance. Applicants are strongly encouraged to enter early in the registration period. Excessive demand at end of the registration period may slow the system down. No entries whatsoever will be accepted after noon EST Friday, January 7, 2005.

8. May Persons Who Are in the U.S. Apply for the Program?

Yes, an applicant may be in the U.S. or in another country, and the entry may be submitted from the U.S. or from abroad.

9. Is Each Applicant Limited to Only One Entry During the Annual DV Registration Period?

Yes, the law allows only one entry by or for each person during each registration period; applicants for whom more than one entry is submitted will be disqualified. The Department of State will employ sophisticated technology and other means to identify individuals that submit multiple entries during the registration period. Applicants submitting more than one entry will be disqualified and an electronic record will be permanently maintained by the Department of State. Applicants may apply for the program each year during the regular registration period.

10. May a Husband and a Wife Each Submit a Separate Entry?

Yes, a husband and a wife may each submit one entry, if each meets the eligibility requirements. If either were selected, the other would be entitled to derivative status.

11. What Family Members Must I Include on My DV Entry?

On your entry you must list your spouse, that is, husband or wife, and all unmarried children under 21 years of age, with the exception of children who are already U.S. citizens or Legal Permanent Residents. You must list your spouse even if you are currently separated from him/her, unless you are legally separated (*i.e.* there is a written agreement recognized by a court or a court order.) If you are legally separated or divorced, you do not need to list your former spouse. You must list ALL your children who are unmarried and under the age of 21 years, whether they are your natural children, your spouse's children, or children you have formally adopted in accordance with the laws of your country, unless such a child is already a U.S. citizen or Legal Permanent Resident. List all children under 21 years of age even if they no longer reside with you or you do not intend for them to immigrate under the DV program.

The fact that you have listed family members on your entry does not mean that they later must travel with you.

They may choose to remain behind. However, if you include an eligible dependent on your visa application forms that you failed to include on your original entry, your case will be disqualified. (This only applies to persons who were dependents at the time the original application was submitted, not those acquired at a later date.) Your spouse may still submit a separate entry, even though he or she is listed on your entry, as long as both entries include details on all dependents in your family. See question 10 above.

12. Must Each Applicant Submit His/Her Own Entry, or May Someone Act on Behalf of an Applicant?

Applicants may prepare and submit their own entries, or have someone submit the entry for them. Regardless of whether an entry is submitted by the applicant directly, or assistance is provided by an attorney, friend, relative, etc., only one entry may be submitted in the name of each person. If the entry is selected, the notification letter will be sent only to the mailing address provided on the entry.

13. What Are the Requirements for Education or Work Experience?

The law and regulations require that every applicant must have at least a high school education or its equivalent or, within the past five years, have two years of work experience in an occupation requiring at least two years training or experience. A ''high school education or equivalent'' is defined as successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to a high school education in the United States. Documentary proof of education or work experience should not be submitted with the lottery entry, but must be presented to the consular officer at the time of the visa interview. To determine eligibility based on work experience, definitions from the Department of Labor's O*Net OnLine database will be used.

14. How Will Successful Entrants Be Selected?

At the Kentucky Consular Center, all entries received from each region will be individually numbered. After the end of the registration period, a computer will randomly select entries from among all the entries received for each geographic region. Within each region, the first entry randomly selected will be the first case registered, the second entry selected the second registration, etc. All entries received during the registration period will have an equal chance of being selected within each region. When an entry has been selected, the applicant will be sent a notification letter by the Kentucky Consular Center, which will provide visa application instructions. The Kentucky Consular Center will continue to process the case until those who are selected are instructed to appear for visa interviews at a U.S. consular office, or until those able to do so apply at a USCIS office in the United States for change of status.

15. May Winning Applicants Adjust Their Status With USCIS?

Yes, provided they are otherwise eligible to adjust status under the terms of Section 245 of the INA, selected applicants who are physically present in the United States may apply to the U.S. Citizenship and Immigration Services (USCIS) for adjustment of status to permanent resident. Applicants must ensure that USCIS can complete action on their cases, including processing of any overseas derivatives, before September 30, 2006, since on that date registrations for the DV–2006 program expire. No visa numbers for the DV–2006 program will be available after midnight on September 30, 2006 under any circumstances.

16. Will Applicants Who Are Not Selected Be Informed?

No, applicants who are not selected will receive no response to their entry. Only those who are selected will be informed. All notification letters are sent within about five to seven months from the end of the application period to the address indicated on the entry. Since there is no notification provided to those not selected, anyone who does not receive a letter about five to seven months from the end of the registration period should assume that his/her application has not been selected.

17. How Many Applicants Will Be Selected?

There are 50,000 DV visas available for DV–2006, but more than that number of individuals will be selected. Because it is likely that some of the first 50,000 persons who are selected will not qualify for visas or pursue their cases to visa issuance, more than 50,000 entries will be selected by the Kentucky Consular Center to ensure that all of the available DV visas are issued. However, this also means that there will not be a sufficient number of visas for all those who are initially selected. All applicants who are selected will be informed promptly of their place on the list. Interviews with those selected will begin in early October 2005. The Kentucky Consular Center will send appointment letters to selected applicants four to six weeks before the scheduled interviews with U.S. consular officers at overseas posts. Each month visas will be issued, visa number availability permitting, to those applicants who are ready for issuance during that month. Once all of the 50,000 DV visas have been issued, the program for the year will end. In principle, visa numbers could be finished before September 2006. Selected applicants who wish to receive visas must be prepared to act promptly on their cases. Random selection by the Kentucky Consular Center computer does not automatically guarantee that you will receive a visa.

18. Is There a Minimum Age for Applicants To Apply for the DV Program?

There is no minimum age to apply for the program, but the requirement of a high school education or work experience for each principal applicant at the time of application will effectively disqualify most persons who are under age 18.

19. Are There Any Fees for the DV Program?

There is no fee for submitting an entry. A special DV case processing fee will be payable later by persons whose entries are actually selected and processed at a U.S. consular section for this year's program. DV applicants, like other immigrant visa applicants, must also pay the regular visa fees at the time of visa application. Details of required fees will be included with the instructions sent by the Kentucky Consular Center to applicants who are selected.

20. Are DV Applicants Specially Entitled To Apply for a Waiver of Any of the Grounds of Visa Ineligibility?

No. Applicants are subject to all grounds of ineligibility for immigrant visas specified in the Immigration and Nationality Act. There are no special provisions for the waiver of any ground of visa ineligibility other than those ordinarily provided in the Act.

21. May Persons Who Are Already Registered for an Immigrant Visa in Another Category Apply for the DV Program?

Yes, such persons may apply for the DV program.

22. How Long Do Applicants Who Are Selected Remain Entitled To Apply for Visas in the DV Category?

Persons selected in the DV–2006 lottery are entitled to apply for visa issuance only during fiscal year 2006, *i.e.*, from October 2005 through September 2006. Applicants must obtain the DV visa or adjust status by the end of the Fiscal Year (September 30, 2006). There is no carry-over of DV benefits into the next year for persons who are selected but who do not obtain visas during FY–2006. Also, spouses and children who derive status from a DV–2006 registration can only obtain visas in the DV category between October 2005 and September 2006. Applicants who apply overseas will receive an appointment letter from the Kentucky Consular Center four to six weeks before the scheduled appointment.

23. When Will E–DV Online Be Available?

Online entry will become available at 12 pm EST (GMT–5) on November 5, 2004 and will end at 12 pm EST (GMT–5) on January 7, 2005.

24. Will I Be Able To Download and Save the E–DV Entry Form to a Microsoft Word Program (or Other Suitable Program) and Then Fill It Out?

No, you will not be able to save the form into another program for completion and submission later. The E–DV Entry Form is a Web form only. This makes it more ''universal'' than a proprietary word processor format. Additionally, it does require that the information be filled in and submitted while on-line.

25. If I Don't Have Access to a Scanner, Can I Send Photos to My Relative in the U.S. to Scan the Photos, Save the Photos to a Diskette, and Then Mail the Diskette Back to Me to Apply?

Yes, this can be done as long as the photo meets the photo requirements in the instructions, and the photo is electronically submitted with, and at the same time the E–DV online entry is submitted. The applicant must already have the scanned photo file when they submit the entry on-line. The photo cannot be submitted separate from the online application. Only one on-line entry by or for each person can be submitted. Multiple submissions will disqualify the entry for that person for DV–2006. The entire entry (photo and application together) can be submitted electronically from the United States.

26. Can I Save the Form On-Line So That I Can Fill Out Part and Then Come Back Later and Complete the Remainder?

No, this cannot be done. The E–DV Entry Form is designed to be completed and submitted at one time. However, because the form is in two parts, and because of possible network interruptions and delays, the E–DV system is designed to handle up to sixty (60) minutes between downloading of the form and when the entry is received at the E–DV Web site after being submitted online. If more than sixty minutes elapses, and the entry has not been electronically received, the information received so far is discarded. This is done so that there is no possibility that a full entry could accidentally be interpreted as a duplicate of a previous partial entry. For example, suppose an applicant with a wife and child sends a filled in E–DV Entry Form Part One and then receives Form Part Two, but there is a delay before sending Part Two because of trouble finding the file which holds the child's photograph. If the filled in Form Part Two is sent by the applicant and received by the E–DV Web site within sixty (60) minutes then there is no problem, but if the Form Part Two is received after sixty (60) minutes has elapsed then the applicant will be informed that they need to start over for the entire entry. The DV–2006 instructions explain clearly and completely what information needs to be gathered to fill in the form. This way you can be fully prepared, making sure you have all of the information needed, before you start to complete the form on-line.

27. If the Submitted Digital Images Do Not Conform to the Specifications, the Procedures State That the System Will Automatically Reject the E–DV Entry Form and Notify the Sender. Does This Mean I Will Be Able to Re-Submit My Entry?

Yes, the entry can be resubmitted. Since the entry was automatically rejected it was not actually considered as submitted to the E–DV Web site. It does not count as a submitted E–DV entry, and no confirmation notice of receipt is sent. If there are problems with the digital photograph sent because it does not conform to the requirements, it is automatically rejected by the E–DV Web site. However, the amount of time it takes the rejection message to reach the sender is unpredictable due to the nature of the Internet. If the problems can be fixed by the applicant, and the Form Part One or Two re-sent within sixty (60) minutes then there is no problem. Otherwise the submission process will have to be started over. An applicant can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent.

28. Will the Electronic Confirmation Notice That the Completed E–DV Entry Form Has Been Received Through the Online System Be Sent Immediately After Submission?

The response from the E–DV Web site which contains confirmation of the receipt of an acceptable E–DV Entry Form is sent by the E–DV Web site immediately, but how long it takes the response to reach the sender is unpredictable due to the nature of the Internet. If many minutes have elapsed since pressing the ''Submit'' button there is no harm in pressing the ''Submit'' button a second time. The E–DV system will not be confused by a situation where the ''Submit'' button is hit a second time because no confirmation response has been received. An applicant can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent.

List of Countries by Region Whose Natives Qualify

The lists below show the countries whose natives are QUALIFIED within each geographic region for this diversity program. The determination of countries within each region is based on information provided by the Geographer of the Department of State. The countries whose natives do not qualify for the DV–2006 program were identified by the U.S. Citizenship and Immigration Services (USCIS) according to the formula in Section 203(c) of the Immigration and Nationality Act. Dependent areas overseas are included within the region of the governing country. The countries whose natives do NOT qualify for this diversity program (because they are the principal source countries of Family-Sponsored and Employment-Based immigration, or ''high admission'' countries) are noted after the respective regional lists.

Africa

Algeria
Angola
Benin
Botswana
Burkina Faso
Burundi
Cameroon
Cape Verde

Central African Republic
Chad
Comoros
Congo
Congo, Democratic Republic of the
Cote D'Ivoire (Ivory Coast)
Djibouti
Egypt
Equatorial Guinea
Eritrea
Ethiopia
Gabon
Gambia, The
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Libya
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Nigeria
Rwanda
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
Sudan
Swaziland
Tanzania
Togo
Tunisia
Uganda
Zambia
Zimbabwe

Asia

Afghanistan
Bahrain
Bangladesh
Bhutan
Brunei
Burma
Cambodia
East Timor
Hong Kong Special Administrative Region
Indonesia
Iran
Iraq
Israel
Japan
Jordon
Kuwait
Laos
Lebanon
Malaysia
Maldives
Mongolia
Nepal
North Korea
Oman
Qatar
Saudi Arabia
Singapore
Sri Lanka
Syria
Taiwan
Thailand
Unite Arab Emirates
Yemen

Natives of the following Asian countries do not qualify for this year's diversity program: China [mainland-born], India, Pakistan, South Korea, Philippines, and Vietnam. The Hong Kong S.A.R. and Taiwan do qualify and are listed above. Macau S.A.R. also qualifies and is listed below.

Europe

Albania
Andorra
Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark (including components and dependent areas overseas)
Estonia
Finland
France (including components and dependent areas overseas)
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Kazakhstan
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Macau Special Administrative Region
Macedonia, the Former Yugoslav Republic
Malta
Moldova
Monaco
Netherlands (including components and dependent areas overseas)
Northern Ireland
Norway
Poland
Portugal (including components and dependent areas overseas)
Romania
San Marino
Serbia and Montenegro
Slovakia
Slovenia
Spain
Sweden
Switzerland
Tajikistan
Turkey
Turkmenistan
Ukraine
Uzbekistan
Vatican City

Natives of the following European countries do not qualify for this year's diversity program: Great Britain and Russia. Great Britain (United Kingdom) includes the following dependent areas: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands. Note that for purposes of the diversity program only, Northern Ireland is treated separately; Northern Ireland does qualify and is listed among the qualifying areas.

North America

The Bahamas

In North America, natives of Canada and Mexico do not qualify for this year's diversity program.

Oceania

Australia (including components and dependent areas overseas)
Fiji
Kiribati
Marshall Islands
Micronesia, Federated States of
Nauru
New Zealand (including components and dependent areas overseas)
Papua New Guinea
Samoa
Solomon Islands
Tonga
Tuvalu
Vanuatu

South America, Central America, and the Caribbean

Antigua and Barbuda
Argentina
Barbados
Belize
Bolivia
Brazil
Chile
Costa Rica
Cuba
Dominica
Ecuador
Grenada
Guatemala
Guyana
Honduras
Nicaragua
Panama
Paraguay

Peru
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Uruguay
Venezuela

Countries in this region whose natives do not qualify for this year's diversity program: Colombia, Dominican Republic, El Salvador, Haiti, Jamaica, and Mexico.

Dated: October 28, 2004.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 04–24940 Filed 11–8–04; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Update on Public Dialogue on Enhancing the Transatlantic Economic Relationship

AGENCY: Office of the United States Trade Representative.

ACTION: Update for the public.

Background

In **Federal Register** notice 04–18716, dated August 17, 2004, the Office of the U.S. Trade Representative sought public input on ideas for deepening transatlantic economic ties and requested that written comments be submitted no later than November 15, 2004. In view of the fact that further public dialogue sessions are being organized for later this year, the deadline for submission of written comments is being extended to December 31, 2004. Electronic submissions should continue to be sent to *FR0438@ustr.eop.gov;* please refer to the previous **Federal Register** notice, referenced above, for details on making such submissions.

The public is advised to call Lisa Errion, Director for Central and Southeast Europe, Office of the U.S. Trade Representative at (202) 395–3320 for further information.

Catherine A. Novelli,

Assistant United States Trade Representative for Europe and the Mediterranean.

[FR Doc. 04–24948 Filed 11–8–04; 8:45 am]

BILLING CODE 3190–W4–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice to modify a system of records.

SUMMARY: DOT proposes to modify an existing system of records under the Privacy Act of 1974.

EFFECTIVE DATE: December 20, 2004. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

ADDRESSES: Address all comments concerning this notice to Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax) *Yvonne.Coates@ost.dot.gov* (Internet address).

FOR FURTHER INFORMATION CONTACT: Theresa Rowlett, (202) 385–2316.

SUPPLEMENTARY INFORMATION: The Department of Transportation system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address.

SYSTEM NUMBER:

DOT/FMCSA 03.

SYSTEM NAME:

Driver waiver/exemption file.

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), Office of Bus and Truck Standards and Operations, 400 7th Street, SW., Washington, DC 20590; FMCSA Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

Operators of interstate commercial motor vehicles who transport certain commodities and have been granted waivers/exemptions from normally-applicable safety requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for waiver, exemptions, final disposition of request for waiver/exemptions; and exemption renewal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Motor Carrier Safety Act of 1984 (49 U.S.C. 31136(e) and TEA–21 (49 U.S.C. 31315).

PURPOSES:

Monitor drivers of commercial motor vehicles who operate in interstate commerce and have requested waivers to existing Federal Motor Carrier Safety Regulations (FMCSRs).

The purpose of the information in these records is to make determinations concerning whether drivers who request exemptions from the medical standards in the FMCSRs should be permitted to operate a CMV in interstate commerce. The determination is based on drivers' medical records describing the impairment for which they are requesting an exemption, the ability to manage the impairment, and the demonstrated ability to operate a CMV in a safe manner with the impairment. This information, with augmentation and updating, is also used every two years to determine if the exemption should be renewed as is specified in TEA–21 (49 U.S.C. 31315). The use of the information in the various determinations is focused on insuring that the program is as safe or safer than the circumstance present in the absence of the program as is required in TEA–21 (49 U.S.C. 31315).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used to monitor the drivers' performance throughout the period they have an exemption and are active in the program. Monitoring could be related to the drivers' medical condition or their driving performance. The records are also used to respond to Congressional inquiries about individuals in the program. Those authorized to use the information are the managers at FMCSA and the members of the contracting project team that supports the program.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are currently stored in two locations. The physical records are stored at a secure site located at the contracting company which supports the exemption program. The records are also stored in an electronic format on a

secure web-based information system. The information system is protected through the use of HTTPS and SSL (Secure Socket Links). All users of the system are required to obtain a client certificate which identifies the user to the web site. The company that supports the program has set up a certificate server, from which authorized users can request a client certificate. All client certificate requests are reviewed by company's Information Systems Manager, who is responsible for providing access to the site. The Information System Manager works with the Project Manager and the FMCSA Project Officer to determine the user access to the site. Once a user is approved, the Information System Manager notifies the user via e-mail that their client certificate has been approved, and provides them with instructions on how to download and install the client certificate on the user's personal computer. Currently, only the project staff and selected FMCSA Managers have access to the site.

RETRIEVABILITY:

Records are retrieved by driver's name.

SAFEGUARDS:

Files are classified as sensitive and are regularly accessible only by designated employees within the FMCSA Service Centers and FMCSA headquarters.

RETENTION AND DISPOSAL:

The files are retained while the driver waivers are active. The inactive driver waiver files are purged every three years.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Motor Carrier Safety Administration, Office of Bus and Truck Standards and Operations, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as ''System Manager.''

RECORD ACCESS PROCEDURES:

Same as ''System Manager.''

CONTESTING RECORD PROCEDURES:

Same as ''System Manager.''

RECORD SOURCE CATEGORIES:

Application for Waiver or Waiver Renewal.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Yvonne L. Coates,

Departmental Privacy Officer.

[FR Doc. 04–24969 Filed 11–8–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing a new fee schedule for the transfer of book-entry securities maintained on the National Book-Entry System (NBES). This fee schedule will take effect on January 3, 2005. The basic fee for the transfer of a Treasury book-entry security will be $.21, unchanged from fees in effect since July 1, 2003. The Federal Reserve funds movement fee will be $.04, unchanged from the funds movement fee in effect since January 2, 2004, resulting in a combined fee of $.25 for each Treasury securities transfer.

In addition to the basic fee, off-line transfers have a surcharge. The surcharge for an off-line Treasury book-entry transfer in CY 2005 will be increasing from $28.00 to $33.00.

EFFECTIVE DATE: January 3, 2005.

FOR FURTHER INFORMATION CONTACT:

Edward C. Leithead, Director, Primary & Secondary Market Fixed Income Securities (Financing), Bureau of the Public Debt, c/o Federal Reserve Bank of New York, 33 Liberty Street, New York, NY 10045–0001, telephone (212) 720–2883.

Danny Convery, Financial Systems Analyst, Bureau of the Public Debt, 799 9th Street NW, Washington, DC 20239, telephone (202) 504–3675.

Dennis Buchholz, Financial Systems Analyst, Bureau of the Public Debt, 799 9th Street NW, Washington, DC 20239, telephone (202) 504–3688.

SUPPLEMENTARY INFORMATION. On October 1, 1985, the Department of the Treasury established a fee structure for the transfer of Treasury book-entry securities maintained on NBES.

Effective January 3, 2005, the basic fee will be $.21 for each Treasury securities transfer and reversal sent and received, unchanged from fees in effect since July 1, 2003. The surcharge for an off-line Treasury book-entry transfer will increase from $28.00 to $33.00.

The basic transfer fee assessed to both sends and receives is reflective of costs associated with the processing of a security transfer. The off-line surcharge reflects the additional processing costs associated with the manual processing of off-line securities transfers.

The Treasury does not charge a fee for account maintenance, the stripping and reconstitution of Treasury securities, or the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. Information concerning book-entry transfers of government Agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System on November 9, 2004, docket number OP–1216.

The following is the Treasury fee schedule that will take effect on January 3, 2005, for the book-entry transfers on NBES:

TREASURY-NBES FEE SCHEDULE [1]

[Effective January 3, 2005]

[In Dollars]

Transfer type	Basic fee	Off-line surcharge	Funds [2] movement fee	Total fee
On-line transfer originated	.21	N/A	.04	.25
On-line transfer received	.21	N/A	.04	.25
On-line reversal transfer originated	.21	N/A	.04	.25
On-line reversal transfer received	.21	N/A	.04	.25
Off-line transfer originated	.21	33.00	.04	33.25
Off-line transfer received	.21	33.00	.04	33.25

TREASURY-NBES FEE SCHEDULE [1]—Continued

[Effective January 3, 2005]

[In Dollars]

Transfer type	Basic fee	Off-line surcharge	Funds [2] movement fee	Total fee
Off-line account switch received	.21	.00	.04	.25
Off-line reversal transfer originated	.21	33.00	.04	33.25
Off-line reversal transfer received	.21	33.00	.04	33.25

[1] The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, or the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

Authority: 31 CFR 357.45.

Dated: November 4, 2004.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 04–24968 Filed 11–8–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–115054–01]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–115054–01(TD 9074) Treatment of Community Income for Certain Individuals Not Filing Joint Returns (§ 1.66–4).

DATES: Written comments should be received on or before January 10, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Community Income for Certain Individuals Not Filing Joint Returns.

OMB Number: 1545–1770.

Regulation Project Number: REG–115054–01.

Abstract: The regulations provide rules to determine how community income is treated under section 66 for certain married individuals in community property states who do not file joint individual Federal income tax returns. The regulations also reflect changes in the law made by the IRS Restructuring and Reform Act of 1998.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

The burden contained in § 1.66–4 is reflected in the burden of Form 8857.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 2, 2004.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–24875 Filed 11–8–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 98–52 and REG–108639–99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 98–52, Cash or Deferred Arrangements; Nondiscrimination, and existing notice of proposed rulemaking, REG–108639–99, Retirement Plans; Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m) (§§ 1.401(k)–3(d) and 1.401(m)–3(e)).

DATES: Written comments should be received on or before January 10, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice and regulation should be directed to Carol Savage at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cash or Deferred Arrangements; Nondiscrimination (Notice 98–52), Retirement Plans; Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m) (REG–108639–9).

OMB Number: 1545–1624.

Notice Number: Notice 98–52.

Regulation Project Number: REG–108639–99.

Abstract: This notice provides guidance to plan administrators, plan sponsors, etc., regarding nondiscriminatory safe harbors with respect to Internal Revenue Code sections 401(k)(12) and 401(m)(11), as amended by the Small Business Job Protection Act of 1996. The safe harbor provisions pertain to the actual deferral percentage test and the actual contribution percentage test for cash or deferred arrangements and for defined contribution plans. To take advantage of the safe harbor provisions, plan sponsors must amend their plans to reflect the new law and must provide plan participants with an annual notice describing the benefits available under the plan.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 60,000.

Estimated Time Per Respondent: 1 hour, 20 minutes.

Estimated Total Annual Burden Hours: 80,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 2, 2004.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–24876 Filed 11–8–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13551

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13551, Application to Participate in the IRS Acceptance Agent Program.

DATES: Written comments should be received on or before January 10, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, Room 6615, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application to Participate in the IRS Acceptance Agent Program.

OMB Number: 1545–1896.

Form Number: 13551.

Abstract: Form 13551 is used to gather information to determine applicant's eligibility in the Acceptance Agent Program.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, and Federal, State, local or tribal government.

Estimated Number of Respondents: 12,825.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 6,413.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 2, 2004.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–24877 Filed 11–8–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
November 9, 2004

Part II

Department of Housing and Urban Development

24 CFR Part 5
Implementation of Requirement in HUD Programs for Use of Data Universal Numbering System (DUNS) Identifier; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4876–F–02]

RIN 2501–AD01

Implementation of Requirement in HUD Programs for Use of Data Universal Numbering System (DUNS) Identifier

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: On March 26, 2004, HUD published an interim rule implementing an Office of Management and Budget (OMB) policy directive that requires grant applicants, other than individuals, to provide a Data Universal Numbering System (DUNS) number when applying for Federal grants or other assistance agreements on or after October 1, 2003. HUD is applying this policy widely to its assistance programs in order to have a single identifier for applicants and to facilitate the transition to electronic application submission. This final rule follows publication of the March 26, 2004, interim rule. HUD did not receive any public comments on the interim rule and, therefore, is adopting the interim rule without change.

DATES: *Effective Date:* December 9, 2004.

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Room 3156, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000, telephone (202) 708–0667 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's March 26, 2004, Interim Rule

On March 26, 2004 (69 FR 15671), HUD published an interim rule implementing a June 27, 2003 (68 FR 38402), OMB final policy directive that implemented a governmentwide requirement for applicants to provide a DUNS number when applying for Federal grants or other assistance on or after October 1, 2003.

OMB determined that there was a governmentwide need for improved statistical reporting of Federal grants and cooperative agreements. Governmentwide use of the DUNS number will provide a means to identify entities receiving those grants and entering into cooperative agreements, as well as the means to identify those entities' business relationships. The identifier will be used for tracking purposes and to validate address and point-of-contact information. The DUNS number is already in general use by the Federal government to identify entities receiving Federal contracts and by some Federal agencies in their grant and cooperative agreement processes. Also, among existing numbering systems, DUNS is the only one that provides the Federal government the ability to determine hierarchical and family-tree data for related organizations.

Based on the OMB directive, HUD published its March 26, 2004, interim rule. The interim rule implemented OMB's DUNS policy and made it widely applicable to HUD funding programs by amending 24 CFR part 5 to add a new subpart K. The new subpart requires organizations that apply for HUD grants or other financial assistance to provide a DUNS number with the application. HUD's regulations at 24 CFR part 5 describe requirements that are generally applicable to all HUD programs.

The objective of this DUNS policy is to help ensure that HUD is able to identify funding received by the various entities that receive HUD program awards. Recipients affected include, but are not limited to: State, local, and tribal governments; public housing agencies (PHAs); tribally designated housing entities (TDHEs); universities and colleges; nonprofit organizations; for-profit organizations; owners of assisted housing; resident management organizations; and resident councils.

II. This Final Rule

This final rule follows publication of the March 26, 2004 interim rule. The interim rule became effective April 26, 2004, and provided for a 60-day comment period. The comment period for the interim rule closed on May 25, 2004. HUD did not receive any public comments on the interim rule. Accordingly, this final rule adopts the interim rule without changes. As discussed above, HUD's DUNS policy is codified in subpart K of HUD's regulations at 24 CFR part 5. This section of the preamble provides an overview of the policies contained in 24 CFR part 5, subpart K.

A. General

Organizations that apply for HUD grants or other financial assistance must provide a DUNS number with the application. This requirement covers funds awarded as a grant, cooperative agreement, capital fund or operating fund subsidy, capital advance, or other assistance. Every application for a new grant or assistance award or renewal of an award or plan (including a PHA plan) under all discretionary and formula grant programs must include an applicant's DUNS number. The DUNS requirement, however, does not extend to Federal Housing Administration (FHA) insurance or loan guarantee transactions that are not associated with a grant program or grant award.

Unless an exemption from this requirement is requested by HUD and approved by OMB, HUD will not consider an application as complete until a valid DUNS number is provided by the applicant. Consistent with the OMB policy directive issued on June 27, 2003, HUD may request that OMB approve an exemption from this requirement for classes of grants or grantees.

Also consistent with the OMB policy directive, it is HUD's intent to make all funding opportunities and applications for assistance available online at *http://www.grants.gov*. Use of the DUNS number will be required for all submissions through *http://www.grants.gov*.

B. Applicability to Consortia and Sponsors

As did the preceding interim rule, this final rule affirms that the DUNS requirement will also apply to groups of organizations applying for HUD grants or other financial assistance as consortia. Applicants or groups of applicants under consortia arrangements must have a DUNS number for the organization that submits an application for Federal assistance on behalf of the other applicants. However, if each organization is submitting a separate application for Federal assistance, then each organization must have a separate DUNS submitted with its application for assistance.

If an organization is managing funds for a group of organizations (as may be the case with several small PHAs utilizing a single management organization to apply for and manage funds on their behalf), a DUNS number must be submitted for the managing organization, if it is drawing down HUD funds directly. If an organization, such as a PHA, draws down funds directly from HUD and subsequently turns the funds over to a management organization, then the management organization must obtain a DUNS number and provide the number to HUD.

C. Applicability to Individuals

Individuals who would personally receive an assistance award from HUD, apart from any business or nonprofit

organization that they may operate or participate in, are exempt from the requirements set forth in this final rule. Specifically, individuals may continue to apply under programs for which they are eligible without providing a DUNS number. In addition, an applicant is not required to submit DUNS numbers for entities with which it may enter into subawards. In cases where individuals apply for funding but the funding will be awarded to an institution or other entity on the individual's behalf, the institution or entity must obtain a DUNS number, and the individual must submit the institution's DUNS number with the application.

III. Obtaining a DUNS Number

The DUNS number does not replace existing identifiers, such as the Employer Identification Number (EIN), the Tax Identification Number (TIN), and State Application Identifier (SAI) numbers that are required by statute, Executive Order, or regulation.

Obtaining a DUNS number is free for all entities doing business with the Federal government. This includes applicants and prospective applicants for grants and cooperative agreements. An applicant should identify its organization as a Federal grant applicant or prospective applicant when it contacts Dun and Bradstreet (D&B) for a DUNS number, as explained below.

The DUNS number is site-specific; therefore, each distinct physical location of an applicant entity (such as a branch, division, or headquarters) may be assigned a DUNS number. If an organization already has a DUNS number in connection with the Federal acquisition process, or requested or had a DUNS number assigned for another purpose, the applicant may use that number for its application. When possible, organizations should avoid establishing new DUNS numbers. Organizations should take responsibility for updating and validating the information associated with the existing DUNS number(s). To help organizations manage multiple DUNS numbers, an entity may request D&B to supply a family tree report of the DUNS numbers associated with the organization. Organizations should work with D&B to ensure that the correct information is in the family tree report. If an organization wishes to determine if it has an existing DUNS number or wishes to request a family tree report, it may contact D&B toll-free at (866) 705–5711.

Organizations may receive a DUNS number by calling the dedicated toll-free DUNS number request line at (866) 705–5711 between 8 a.m. and 6 p.m. (local time of the caller when calling from within the United States). Speech- or hearing-impaired individuals may access the toll-free DUNS number request line through TTY by calling (866) 814–7818. Organizations alternatively may apply for DUNS numbers online at *http://www.dunandbradstreet.com*. For faster service, HUD recommends using the telephone request line to obtain a DUNS number. The telephone call to obtain a DUNS number takes approximately five to ten minutes, and a DUNS number will be assigned at the conclusion of the call. Applicants should expect that the following information will be requested: legal name; name and address for the organization's headquarters; ''doing business as'' (DBA) or other name by which the organization is commonly known or recognized; physical address, city, State and zip code; mailing address (if different from headquarters or physical address); telephone number; contact name and title; and number of employees.

IV. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the order.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. DUNS numbers are immediately obtained at no cost with minimal time and effort, and there are not any unusual procedures with which small entities alone would have to comply. Accordingly, the final rule will not impose any new costs, or modify existing costs, applicable to HUD grantees.

Environmental Impact

In accordance with 24 CFR part 50.19(c)(1) of the Department's regulations, this final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332).

Catalog of Federal Domestic Assistance (CFDA) Numbers

The regulatory amendments contained in this final rule generally apply to all HUD assistance awards, unless the recipient is specifically exempted under this final rule or the program. The Catalog of Federal Domestic Assistance number for a particular HUD program may be found on the CFDA Web site at *http://www.cfda.gov*.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Information and statistics, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated in the preamble, the interim rule that added Subpart K to part 5 of title 24 of the Code of Federal Regulations, published on March 26, 2004, at 69 FR 15671, is adopted as a final rule without change.

Dated: November 1, 2004.

Alphonso Jackson,

Secretary.

[FR Doc. 04–24884 Filed 11–8–04; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Tuesday,
November 9, 2004

Part III

Department of Education

Office of Innovation and Improvement, Overview Information, Advanced Placement (AP) Test Fee Program, Inviting Applications for New Awards for Fiscal Year (FY) 2005; Notice

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement, Overview Information, Advanced Placement (AP) Test Fee Program, Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.330B.

DATES: Applications Available: November 9, 2004.

Deadline for Notice of Intent to Apply: December 1, 2004.

Deadline for Transmittal of Applications: December 13, 2004.

Deadline for Intergovernmental Review: February 11, 2005.

Eligible Applicants: State educational agencies (SEAs) in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Note: For purposes of this program, the Bureau of Indian Affairs is treated as an SEA.

Estimated Available Funds: The Administration has requested $51,534,000 for the Advanced Placement programs for FY 2005. The actual level of funding depends on final congressional action. The Department is inviting applications for this competition now so that it may be prepared to make awards following final congressional action on the Department's appropriation bill. Based on the Administration's request, we estimate $6 million will be available for new awards under this competition but, in accordance with statutory requirements, will make more funds available from the Advanced Placement Incentive program (CFDA number 84.330C) if necessary.

Estimated Range of Awards: $5,000–$500,000.

Estimated Average Size of Awards: $120,000.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The AP Test Fee program provides grants to States to enable them to pay advanced placement test fees on behalf of eligible low-income students who (1) are enrolled in an advanced placement course; and (2) plan to take an advanced placement exam. The program is designed to increase the number of low-income students who take advanced placement tests and receive scores for which college academic credit is awarded. Participation in this program helps low-income students achieve to higher standards in English, mathematics, science, and other core subjects. The program also seeks to increase the number of low-income students who achieve baccalaureate and advanced degrees.

Allowable Activities: States receiving grants under this program may use the grant funds to pay part or all of the cost of advanced placement test fees for low-income individuals who (1) are enrolled in an advanced placement class; and (2) plan to take an advanced placement test.

Program Authority: 20 U.S.C. 6531–6537.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $51,534,000 for the Advanced Placement programs for FY 2005. The actual level of funding depends on final congressional action. The Department is inviting applications for this competition now so that it may be prepared to make awards following final congressional action on the Department's appropriation bill. Based on the Administration's request, we estimate $6 million will be available for new awards under this competition but, in accordance with statutory requirements, will make more funds available from the Advanced Placement Incentive program (CFDA number 84.330C) if necessary.

Estimated Range of Awards: $5,000–$500,000.

Estimated Average Size of Awards: $120,000.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Note: For purposes of this program, the Bureau of Indian Affairs is treated as an SEA.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching but does involve supplement-not-supplant funding provisions.

Supplement not Supplant: Funds provided under this program must be used only to supplement and not supplant other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees (20 U.S.C. 6536).

3. *Other:* (a) *Definitions.* The following definitions are taken from the Advanced Placement Programs authorizing statute, in Title I, Part G of the Elementary and Secondary Education Act of 1965, as amended (ESEA). They are repeated in this application notice for the convenience of the applicant.

(i) The term *advanced placement test* means an advanced placement test administered by the College Board or approved by the Secretary of Education.

Note: The Department has approved advanced placement tests administered by the International Baccalaureate Organization. As part of the grant application process, applicants may request approval of tests from other educational entities that provide comparable programs of rigorous academic courses and testing through which students may earn college credit.

(ii) The term *low-income individual* means an individual who is determined by an SEA or local educational agency to be a child, ages 5 through 19, from a low-income family on the basis of data used by the Secretary to determine allocations under section 1124 of Title I of the ESEA, data on children eligible for free or reduced-price lunches under the National School Lunch Act, data on children in families receiving assistance under part A of title IV of the Social Security Act, or data on children eligible to receive medical assistance under the Medicaid program under title XIX of the Social Security Act, or through an alternate method that combines or extrapolates from those data.

(b) *Information Dissemination.* In accordance with section 1704(c) of the ESEA (20 U.S.C. 1704(c)), an SEA awarded a grant under the AP Test Fee Program must disseminate information regarding the availability of advanced placement test fee payments under this program to eligible individuals through secondary school teachers and guidance counselors.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publication Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.330B.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact).

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: Applicants that plan to apply for funding under this program are encouraged to e-mail the AP Test Fee Program manager of an intent to apply at *madeline.baggett@ed.gov* no later than December 1, 2004. Applicants that fail to supply this e-mail notification may still apply for funding under this competition.

Page Limit for Program Narrative: The program narrative is where you, the applicant, address the Requirements for Approval of Application. You must limit the program narrative to the equivalent of no more than 30 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the program narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit applies only to the narrative section of the application. Instructions for completing the program narrative section are in the application package (see Section C: Application Forms and Instructions).

Our reviewers will not read any pages of your program narrative that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:* Applications Available: November 9, 2004.

Deadline for Notice of Intent to Apply: December 1, 2004.

Deadline for Transmittal of Applications: December 13, 2004.

Applications for grants under the AP Test Fee program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or to request a waiver of the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the application requirements.

Deadline for Intergovernmental Review: February 11, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically, unless you request a waiver of this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the AP Test Fee Program—CFDA Number 84.330B must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

If you are unable to submit an application through the e-Grants system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Madeline Baggett, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W210, Washington, DC 20202–5943. Please submit your request no later than two weeks before the application deadline date. Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

If, within two weeks of the application deadline date, including the application deadline date itself, you are unable to submit an application electronically, you must submit a paper application in accordance with the mail or hand delivery instructions described in this notice. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application electronically.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for the AP Test Fee Program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you request a waiver and submit your application in paper format because you were prevented from submitting it electronically as required.
- You must submit all documents electronically, including the Application for Federal Education

Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to download it and print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The applicant's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an electronic application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail is sent to all registered users who have initiated an application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice. Your paper application must be accompanied by a written request for waiver of the electronic submission requirement documenting the reasons that prevented you from using the Internet to submit your application electronically.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must send the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.330B), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.330B), 7100 Old Landover Road, Landover, MD 20785–1506.

The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 business days from the mailing of your application, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

You must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

3. A dated shipping label, invoice, or receipt from a commercial carrier; or

4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

1. A private metered postmark, or

2. A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you have requested a waiver of the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.330B, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays. A person delivering an application must show photo identification to enter the building.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

2. The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Review and Selection Process:* In accordance with statutory requirements, the Department gives priority to funding applications (from among those received for the two Advanced Placement programs authorized under Title I, Part G of the ESEA) to use grant funds to pay advanced placement test fees on behalf of eligible low-income individuals. The Department intends to fund, at some level, all applications for this competition that meet the minimum Requirements for Approval of Application as described in the application package. However, in determining whether to approve an application for a new award from an applicant with a current grant under the program, the Department will consider

the amount of any carryover funds under the existing grant.

2. *Award Basis:* In determining grant award amounts, the Department will consider, among other things, the amount of any carryover funds the applicant has under an existing grant under the program and the number of children in the State eligible to be counted under section 1124(c) of Title I of the ESEA in relation to the number of such children counted in all the States that apply for funding. Complete budget data must be submitted for each year of funding requested.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration.* Applicants approved for funding under this competition may be required to attend a one- or two-day Grants Administration meeting in Washington, DC during the first year of the grant. The cost of attending this meeting may be paid from API program grant funds or State or local resources.

4. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that meets the reporting requirements in section 1704(f)(1) of the ESEA and provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

5. *Performance Measures:* The Secretary has developed four performance measures for assessing the effectiveness of the two Advanced Placement programs authorized under Title I, Part G of the ESEA. These measures are:

(a) Number of Advanced Placement (AP) tests taken by low-income students nationally;

(b) Number of International Baccalaureate (IB) tests taken by low-income students nationally;

(c) Percentage of low-income students served by the Department's Advanced Placement programs who receive a passing score on AP tests; and

(d) Percentage of low-income students served by the Department's Advanced Placement programs who receive a passing score on IB tests.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W210, Washington, DC 20202–5943. Telephone: (202) 260–2502 or by e-mail: *madeline.baggett@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 3, 2004.

Nina Shokraii Rees,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 04–24895 Filed 11–8–04; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Tuesday,
November 9, 2004

Part IV

Department of Education

Office of Innovation and Improvement (OII) Overview Information; Advanced Placement Incentive (API) Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005; Notice

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement (OII) Overview Information; Advanced Placement Incentive (API) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.330C.

Dates: Applications Available: November 9, 2004.

Deadline for Notice of Intent to Apply: December 15, 2004.

Deadline for Transmittal of Applications: January 5, 2005.

Deadline for Intergovernmental Review: March 7, 2005.

Eligible Applicants:

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs), including charter schools that are considered LEAs under State law; or

(c) National nonprofit educational entities with expertise in advanced placement services.

Note: In the case of an eligible entity that is an SEA, the SEA may use API grant funds to award subgrants to LEAs to enable those LEAs to carry out authorized activities that support the absolute priority for this competition.

Estimated Available Funds: The Administration has requested $51,534,000 for the Advanced Placement programs for FY 2005. The actual level of funding depends on final congressional action. The Department is inviting applications for this competition now so that it may be prepared to make awards following final congressional action on the Department's appropriation bill. Based on the Administration's request, we estimate that $25 million will be available for new awards under this competition.

Note: In accordance with statutory requirements, this estimate is based on the amount of funds the Secretary estimates will be available after the Department has awarded grants under the Advanced Placement Test Fee program, which is being announced separately under CFDA number 84.330B.

Estimated Range of Awards: $500,000—$1,000,000.

Estimated Average Size of Awards: $750,000.

Estimated Number of Awards: 32.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The API program, funded under section 1705 of Title I, Part G of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), awards competitive grants designed to increase the successful participation of low-income students in pre-advanced placement and advanced placement courses and tests. By supporting increased access to and participation in pre-advanced placement and advanced placement courses and tests, the program provides greater opportunities for low-income students to achieve to high standards in English, mathematics, science, and other core subjects.

Priorities: This competition includes one absolute priority and four competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv) and (b)(2)(v), these priorities are from the priorities and allowable activities specified in section 1705(c) and (d) of the ESEA, as amended by the NCLB (20 U.S.C. 6535–6537).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: *Implementation of Pre-Advanced Placement and Advanced Placement Programs in High-Poverty Schools.* The Secretary establishes an absolute priority for applications that:

(1) Demonstrate an intent to carry out activities that target schools, or LEAs operating schools, with a high concentration of low-income students (and, if the applicant is an LEA, propose to serve schools with a high concentration of low-income students); and

(2) Propose to develop, enhance, or expand pre-advanced placement courses, in conjunction with advanced placement courses, in English, mathematics, science, and other core academic areas at the middle or high school level. Effective pre-advanced placement programs should increase the level of participation of low-income students who enroll and succeed in advanced placement courses and tests in core academic areas. Proposals may include vertical teams training, high-quality professional development for pre-advanced placement and advanced placement teachers, and coordination of curriculum design and development between middle and high school teachers.

Notes: (1) Pre-advanced placement courses are intended to provide middle and high school students with the critical thinking skills, content knowledge, and study habits necessary for successful participation in advanced placement courses. Applicants should explain why the courses supported by the proposed project qualify as pre-advanced placement or advanced placement.

(2) For the definitions of *low-income individual* (including a list of other types of data that may be used to verify low-income status) and *high concentration of low-income students*, see the definitions in Section III. 3. Other of this notice.

Allowable Activities: Activities supported under this priority must be designed to expand access for low-income individuals to pre-advanced placement and advanced placement programs and must involve one or more of the following:

- Teacher training;
- Pre-advanced placement course development;
- Coordination and articulation between grade levels to prepare students to enter and succeed in advanced placement courses;
- Books and supplies;
- Activities to increase the availability of, and participation in, on-line advanced placement courses; or
- Any other activity directly related to expanding access to and participation in pre-advanced placement and advanced placement programs, particularly for low-income individuals.

Competitive Preference Priorities: For FY 2005 these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(i), we award up to an additional sixteen (16) points to an application, depending on the extent to which the application meets one or more of these priorities.

These priorities are: Competitive Preference Priority 1: Up to ten (10) points for demonstrating a pervasive need for the development of pre-advanced placement or advanced placement courses for middle or high schools where there are few or no advanced placement courses currently available.

Competitive Preference Priority 2: Up to two (2) points for demonstrating involvement of business and community organizations in the activities assisted.

Competitive Preference Priority 3: Up to two (2) points for demonstrating the availability of matching funds from State, local, or other sources to pay for a portion of the cost of activities to be assisted.

Competitive Preference Priority 4: Up to two (2) points for demonstrating the intent to carry out activities to increase the availability of, and participation in, on-line advanced placement courses.

Note: These priority points are in addition to any points the applicant earns under the

Selection Criteria described elsewhere in this notice (*see* V. Application Review Information). The *Selection Criteria* will not be used to evaluate these competitive preference priorities.

Program Authority: 20 U.S.C. 6535–6537.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $51,534,000 for this program for FY 2005. The actual level of funding depends on final congressional action. The Department is inviting applications for this competition now so that it may be prepared to make awards following final congressional action on the Department's appropriation bill. Based on the Administration's request, we estimate that $25 million will be available for new awards under this competition.

Note: In accordance with statutory requirements, this estimate is based on the amount of funds the Secretary estimates will be available after the Department has awarded grants under the Advanced Placement Test Fee program, which is being announced separately under CFDA number 84.330B.

Estimated Range of Awards: $500,000–$1,000,000.

Estimated Average Size of Awards: $750,000.

Estimated Number of Awards: 32.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:*

(a) SEAs;

(b) LEAs, including charter schools that are considered LEAs under State law; or

(c) National nonprofit educational entities with expertise in advanced placement services.

Note: In the case of an eligible entity that is an SEA, the SEA may use API grant funds to award subgrants to LEAs to enable those LEAs to carry out authorized activities that support the absolute priority for this competition.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching but does involve supplement-not-supplant funding provisions.

Supplement not Supplant: Funds provided under this program must be used only to supplement and not supplant other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees (20 U.S.C. 6536).

3. *Other: Definitions.* The following definitions are taken from the API Program authorizing statute, in Title I, Part G of the ESEA (20 U.S.C. 6537). They are repeated in this application notice for the convenience of the applicant.

(a) The term *advanced placement test* means an advanced placement test administered by the College Board or approved by the Secretary.

Note: The Department has approved advanced placement tests administered by the International Baccalaureate Organization. As part of the grant application process, applicants may request approval of tests from other educational entities that provide comparable programs of rigorous academic courses and testing through which students may earn college credit.

(b) The term *high concentration of low-income students*, used with respect to a school, means a school that serves a student population 40 percent or more of whom are low-income individuals.

(c) The term *low-income individual* means an individual who is determined by an SEA or LEA to be a child, ages 5 through 19, from a low-income family on the basis of data used by the Secretary to determine allocations under section 1124 of the ESEA, data on children eligible for free or reduced-price lunches under the National School Lunch Act, data on children in families receiving assistance under Part A of Title IV of the Social Security Act, or data on children eligible to receive medical assistance under the Medicaid program under Title XIX of the Social Security Act, or through an alternate method that combines or extrapolates from those data.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publication Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.330C.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact).

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: Applicants that plan to apply for funding under this program notice are encouraged to indicate an intent to apply via e-mail notification sent to the API program manager, Madeline Baggett, at *madeline.baggett@ed.gov* no later than December 15, 2004. Applicants that fail to supply this e-mail notification may still apply for funding under this notice.

Page Limit for Program Narrative: The program narrative is where you, the applicant, address the selection criteria (*i.e.,* within the context of the absolute priority) as well as the competitive preference priorities that reviewers use to evaluate your application. You must limit the program narrative to the equivalent of no more than 75 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the program narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit applies only to the program narrative section of the application. A complete description of the requirements for the program narrative section is found in the application package in Section C: Application Forms and Instructions.

Our reviewers will not read any pages of your program narrative that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times: Applications Available:* November 9, 2004.

Deadline for Notice of Intent to Apply: December 15, 2004.

Deadline for Transmittal of Applications: January 5, 2005.

Applications for grants under the API program competition must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or to request a waiver of the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the application requirements. Deadline for Intergovernmental Review: March 7, 2005.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you request a waiver of this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the API Program-CFDA Number 84.330C must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

If you are unable to submit an application through the e-Grants system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Madeline Baggett, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W210, Washington, DC 20202–5943. Please submit your request no later than two weeks before the application deadline date. Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

If, within two weeks of the application deadline date, including the application deadline date itself, you are unable to submit an application electronically, you must submit a paper application in accordance with the mail or hand delivery instructions described in this notice. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application electronically.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for the API Program competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you request a waiver and submit your application in paper format because you were prevented from submitting it electronically as required.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to download it and print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The applicant's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an electronic application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail is sent to all registered users who have initiated an application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and you are unable to submit your application electronically or you do not

receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice. Your paper application must be accompanied by a written request for waiver of the electronic submission requirement documenting the reasons that prevented you from using the Internet to submit your application electronically.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must send the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.330C), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center-Stop 4260, Attention: (CFDA Number 84.330C), 7100 Old Landover Road, Landover, MD 20785–1506.

The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 business days from the mailing of your application, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

You must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

3. A dated shipping label, invoice, or receipt from a commercial carrier; or

4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

1. A private metered postmark, or

2. A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you have requested a waiver of the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.330C, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

2. The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and section 1705(f) of the ESEA. These selection criteria apply to the absolute priority and allowable activities only. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion. The maximum number of points an application may earn based on the competitive preference priorities and the selection criteria is 116 points. The criteria are as follows:

(a) *Significance* (20 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The likelihood that the proposed project will result in system changes or improvements.

(2) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of the Project Design* (20 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach for meeting the priority or priorities established for this competition.

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(c) *Quality of Project Services* (20 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been under-represented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(2) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(d) *Quality of Project Personnel* (10 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director.

(2) The qualifications, including relevant training and experience, of key project personnel.

(e) *Quality of the Management Plan* (10 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the

proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(f) *Quality of the Project Evaluation* (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(2) The extent to which the evaluation meets the reporting requirements of section 1705(f)(1) of the authorizing statute.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants approved for funding under this competition may be required to attend a one- or two-day Grants Administration meeting in Washington, DC during the first year of the grant. The cost of attending this meeting may be paid from API program grant funds or State or local resources.

4. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that meets the reporting requirements in section 1705(f)(1) of the ESEA and provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

5. *Performance Measures:* The Secretary has developed four performance measures for assessing the effectiveness of the two Advanced Placement programs authorized under Title I, Part G of the ESEA. These measures are:

(a) Number of Advanced Placement (AP) tests taken by low-income students nationally;

(b) Number of International Baccalaureate (IB) tests taken by low-income students nationally;

(c) Percentage of low-income students served by the Department's Advanced Placement programs who receive a passing score on AP tests; and

(d) Percentage of low-income students served by the Department's Advanced Placement programs who receive a passing score on IB tests.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W210, Washington, DC 20202–5943. Telephone number: (202) 260–2502 or by e-mail: *madeline.baggett@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 3, 2004.

Nina Shokraii Rees,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 04–24896 Filed 11–8–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
November 9, 2004

Part V

The President

Federal Register
Vol. 69, No. 216
Tuesday, November 9, 2004

Presidential Documents

Title 3—

The President

Proclamation 7838 of November 4, 2004

National Adoption Month, 2004

By the President of the United States of America

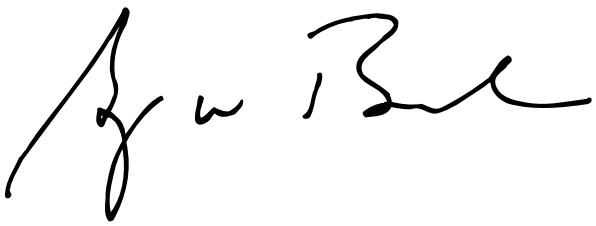
A Proclamation

By deciding to share their hearts and homes with a child, adoptive parents demonstrate great compassion and receive many blessings in return. During National Adoption Month, we recognize the generosity of adoptive and foster families who are providing hope and love, and we encourage the adoption of children of all ages.

In 2002, I signed the Promoting Safe and Stable Families legislation that supports families and promotes adoption, and last December I signed the Adoption Promotion Act of 2003 to increase incentives to adopt older children. We have raised the adoption tax credit to $10,000 per child and created the *AdoptUSKids* website that has joined thousands of children with adoptive parents. We are working hard to place more children from foster care to permanent homes. This year, on November 20, communities from all 50 States and the District of Columbia will celebrate National Adoption Day by finalizing the adoption of thousands of children by loving families. And each one of those families will be enriched by the addition of new members. By bringing care and hope into other lives, individuals can fill their own lives with greater purpose.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2004 as National Adoption Month. I call on all Americans to observe this month with appropriate programs and activities to honor adoptive families and to participate in efforts to find permanent homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–25163
Filed 11–8–04; 9:39 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7839 of November 4, 2004

National Alzheimer's Disease Awareness Month, 2004

By the President of the United States of America

A Proclamation

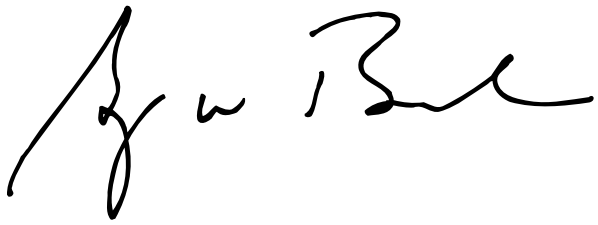
Today, it is estimated that over 4 million Americans suffer from Alzheimer's disease. A progressive, degenerative disorder of the brain, Alzheimer's robs individuals of their memory and their mental and physical functions, leading to increasing dependence on others for care. Factors such as age and family history can contribute to the risk of developing this disease. While no cure exists yet, researchers are learning more about this disease and how to enhance the quality of life for those with Alzheimer's.

President Reagan believed in the courage and capacity of the American people to overcome any obstacle, and my Administration remains committed to funding medical research programs to find a cure for Alzheimer's disease and improving care for Alzheimer's patients and increasing support for their families. The National Institutes of Health plans to spend $680 million in Alzheimer's research in 2004 and an estimated $699 million in 2005, a 33 percent increase from 2001. The National Institutes of Health, along with the Department of Veterans Affairs, is testing drugs for prevention and treatment of Alzheimer's disease. This year, the National Institute on Aging launched the Alzheimer's Disease Neuroimaging Initiative, an innovative partnership with the private sector that is using the latest technologies to observe changes in the brains of individuals who are affected by Alzheimer's. This project is researching ways to enhance early diagnosis and further the development of treatments. In addition, the Administration on Aging is working with States to improve home and community-based services for people with dementia and their families.

As we observe National Alzheimer's Disease Awareness Month, we recognize our citizens who are living with this disease and extend our gratitude to those who provide vital care and support. We also specially recognize the public and private scientists, researchers, nurses, and health care providers who are dedicated to finding new and better ways to help patients and ultimately find a cure for Alzheimer's disease. Their efforts bring comfort to many and offer hope for the future.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2004 as National Alzheimer's Disease Awareness Month. I call upon the people of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–25164
Filed 11–8–04; 9:39 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7840 of November 4, 2004

National American Indian Heritage Month, 2004

By the President of the United States of America

A Proclamation

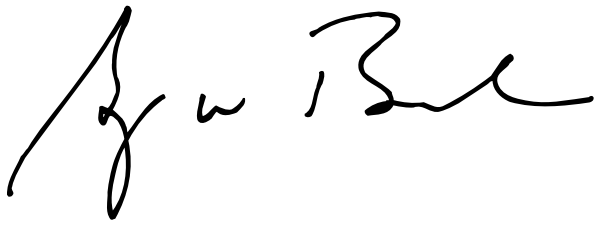
As the first people to call our country home, American Indians and Alaska Natives have a noble history in this land and have long shaped our Nation. During National American Indian Heritage Month, we celebrate our commitment to respect and preserve the rich Native American traditions and cultures.

The enduring experiences of tribal communities are a cherished part of our national story. In September, I was proud to meet with tribal leaders and celebrate the opening of the Smithsonian Institution's National Museum of the American Indian on the National Mall in Washington, D.C. This new facility stands as a powerful symbol of the pride and vitality of our Native Peoples. The museum showcases masterworks of great cultural, historical, and spiritual significance. Through exhibits documenting past and present achievements and hopes for the future, it will introduce generations of visitors to the strong and living traditions of Native Americans. As a center for scholarship and learning, the National Museum of the American Indian will also advance understanding of the diversity that makes our Nation great.

My Administration is committed to helping Native Americans as they build on their proud legacy. With the funding of my 2005 budget, we will have provided the Bureau of Indian Affairs with more than $1.1 billion for school construction and repairs during the past 4 years. To improve education for American Indian and Alaska Native children, I signed an executive order establishing an Interagency Working Group to help students meet the standards set by the No Child Left Behind Act of 2001 in a manner that is consistent with tribal traditions, languages, and cultures. By setting standards for academic achievement and cultural learning, Americans in all communities can help their children realize a brighter future. I also signed an executive memorandum to all Federal agencies affirming the Federal Government's continuing commitment to recognize tribal sovereignty and self-determination. As they have in the past, tribal governments will maintain jurisdiction over their lands, systems of self-governance, and government-to-government relationships with the United States.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2004 as National American Indian Heritage Month. I encourage all Americans to commemorate this month with appropriate programs and activities and to learn more about the rich heritage of American Indians and Alaska Natives.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–25165
Filed 11–8–04; 9:39 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7841 of November 4, 2004

National Diabetes Month, 2004

By the President of the United States of America

A Proclamation

More than 18 million Americans are estimated to have diabetes. Diabetes is the leading cause of new blindness, end-stage kidney disease, and nontraumatic amputations. It can also double a person's risk of heart attack and stroke and can cause nervous system damage and premature death. During National Diabetes Month, we seek to raise awareness of the impact of diabetes on our citizens, and we recognize those committed to improving the treatment and prevention of this chronic disease.

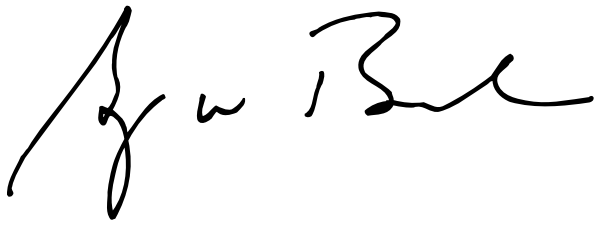
Approximately one million Americans have been diagnosed with type 1 diabetes, once known as juvenile diabetes. It develops from autoimmune, genetic, and environmental influences, most often striking children, adolescents, and young adults. By developing the disease so young, people with type 1 diabetes have a greater risk for serious complications. Type 2 diabetes affects approximately 17 million Americans, and is most common in people over 40 who are overweight, inactive, or have a family history of this disease. While people of all backgrounds are affected, type 2 diabetes disproportionately strikes African Americans, Hispanic Americans, Asian Americans, and Native Americans. The number of Americans with type 2 diabetes has grown dramatically, and many more Americans are at high risk for developing it.

My Administration is committed to funding diabetes research. This year, the National Institutes of Health dedicated $993 million for diabetes research, and I have requested more that $1 billion for 2005, a 49 percent increase since 2001.

We are also working to raise awareness of the risk factors associated with diabetes. According to clinical research, people at risk for type 2 diabetes can reduce their risk by approximately 58 percent if they lose a modest amount of weight and stay physically active. Those who already live with diabetes can greatly reduce their risk for heart disease and stroke by controlling their blood sugar, blood pressure, and cholesterol.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2004 as National Diabetes Month. I call upon all Americans to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



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Presidential Documents

Proclamation 7842 of November 4, 2004

National Family Caregivers Month, 2004

By the President of the United States of America

A Proclamation

Every day, family caregivers across our Nation are caring for loved ones who are aging, chronically ill, or disabled. Through their selfless actions, they bring comfort to those in need, enrich their own lives, and reflect the true spirit of America.

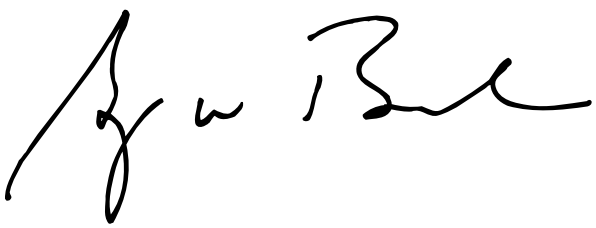
America is a country of hope and promise that honors the dignity of all its citizens. Our family caregivers sometimes sacrifice their own emotional and physical needs to dedicate their time and energy to serving their loved ones. By taking on this enormous responsibility, they are helping honor life in all its seasons.

My Administration remains committed to supporting the important contributions of family caregivers. My fiscal year 2005 budget includes tax relief for Americans who need long-term care and individuals who care for these family members in their homes. We will also continue to work with employers, faith-based and community organizations, universities, and national aging organizations to bring critical services such as individual counseling, educational activities, respite care, and family leave policies to more Americans.

By bringing loving support to their loved ones, our Nation's family caregivers make our country a better place. During National Family Caregivers Month, we honor their generosity and dedication, and we recognize the vital role of family in the lives of our citizens.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2004 as National Family Caregivers Month. I encourage all Americans to honor and support the family members, friends, and neighbors who provide care to their loved ones in need.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–25167
Filed 11–8–04; 9:39 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7843 of November 4, 2004

National Hospice Month, 2004

By the President of the United States of America

A Proclamation

Hospice programs are a vital part of our Nation's health care system. They provide comfort, peace, and dignity for individuals in the final stage of life and their families. During National Hospice Month, we recognize the dedicated professionals and volunteers who provide hospice care, and we emphasize the importance of respecting and honoring life in all of its seasons.

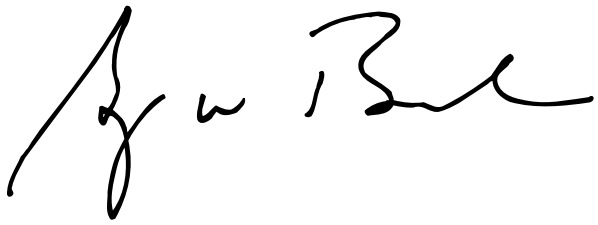
For many terminally ill patients, hospice care is a compassionate alternative to traditional care at a hospital or nursing home. Hospice physicians, nurses, counselors, and volunteers focus on making patients as comfortable as possible, while allowing patients to remain at home and close to their families. With comprehensive assistance, these caregivers help control pain and other symptoms and provide emotional and spiritual support to both patient and family. In 2002, according to the National Hospice and Palliative Care Organization, an estimated 885,000 individuals were admitted to one of the over 3,000 hospice programs in the United States.

My Administration has acted to strengthen and modernize Medicare for our seniors, and we remain committed to providing a health care system that meets the needs of every patient. Hospice services are covered by Medicare, and many States offer hospice care under their Medicaid programs. The Medicare legislation that I signed into law last December provides that Medicare will, for the first time, cover hospice consultation services so that terminally ill patients and their families will better understand end-of-life issues and care options. The legislation also makes the program more flexible and responsive to the needs of patients, allows patients to designate a nurse practitioner to coordinate their hospice care, and directs the Secretary of Health and Human Services to explore ways to make hospice care more widely available to beneficiaries who live in rural areas.

Americans believe in the worth and dignity of every person, and we are promoting a culture of life in our Nation. By caring for life at every stage, we can create a more compassionate and merciful world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2004 as National Hospice Month. I encourage all our citizens to observe this month with appropriate programs and activities. I also ask Americans to recognize our health care professionals and volunteers for their contributions to helping those facing terminal illness receive quality care.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4381/P.L. 108–392
To designate the facility of the United States Postal Service located at 2811 Springdale Avenue in Springdale, Arkansas, as the "Harvey and Bernice Jones Post Office Building". (Oct. 30, 2004; 118 Stat. 2245)

H.R. 4471/P.L. 108–393
Homeownership Opportunities for Native Americans Act of 2004 (Oct. 30, 2004; 118 Stat. 2246)

H.R. 4481/P.L. 108–394
Wilson's Creek National Battlefield Boundary Adjustment Act of 2004 (Oct. 30, 2004; 118 Stat. 2247)

H.R. 4556/P.L. 108–395
To designate the facility of the United States Postal Service located at 1115 South Clinton Avenue in Dunn, North Carolina, as the "General William Carey Lee Post Office Building". (Oct. 30, 2004; 118 Stat. 2249)

H.R. 4579/P.L. 108–396
Truman Farm Home Expansion Act (Oct. 30, 2004; 118 Stat. 2250)

H.R. 4618/P.L. 108–397
To designate the facility of the United States Postal Service located at 10 West Prospect Street in Nanuet, New York, as the "Anthony I. Lombardi Memorial Post Office Building". (Oct. 30, 2004; 118 Stat. 2251)

H.R. 4632/P.L. 108–398
To designate the facility of the United States Postal Service located at 19504 Linden Boulevard in St. Albans, New York, as the "Archie Spigner Post Office Building". (Oct. 30, 2004; 118 Stat. 2252)

H.R. 4731/P.L. 108–399
To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program. (Oct. 30, 2004; 118 Stat. 2253)

H.R. 4827/P.L. 108–400
To amend the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 to rename the Colorado Canyons National Conservation Area as the McInnis Canyons National Conservation Area. (Oct. 30, 2004; 118 Stat. 2254)

H.R. 4917/P.L. 108–401
Federal Regulatory Improvement Act of 2004 (Oct. 30, 2004; 118 Stat. 2255)

H.R. 5027/P.L. 108–402
To designate the facility of the United States Postal Service located at 411 Midway Avenue in Mascotte, Florida, as the "Specialist Eric Ramirez Post Office". (Oct. 30, 2004; 118 Stat. 2257)

H.R. 5039/P.L. 108–403
To designate the facility of the United States Postal Service located at United States Route 1 in Ridgeway, North Carolina, as the "Eva Holtzman Post Office". (Oct. 30, 2004; 118 Stat. 2258)

H.R. 5051/P.L. 108–404
To designate the facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, as the "Leonard C. Burch Post Office Building". (Oct. 30, 2004; 118 Stat. 2259)

H.R. 5107/P.L. 108–405
Justice for All Act of 2004 (Oct. 30, 2004; 118 Stat. 2260)

H.R. 5131/P.L. 108–406
Special Olympics Sport and Empowerment Act of 2004 (Oct. 30, 2004; 118 Stat. 2294)

H.R. 5133/P.L. 108–407
To designate the facility of the United States Postal Service located at 11110 Sunset Hills Road in Reston, Virginia, as the "Martha Pennino Post Office Building". (Oct. 30, 2004; 118 Stat. 2297)

H.R. 5147/P.L. 108–408
To designate the facility of the United States Postal Service located at 23055 Sherman Way in West Hills, California, as the "Evan Asa Ashcraft Post Office Building". (Oct. 30, 2004; 118 Stat. 2298)

H.R. 5186/P.L. 108–409
Taxpayer-Teacher Protection Act of 2004 (Oct. 30, 2004; 118 Stat. 2299)

H.R. 5294/P.L. 108–410
John F. Kennedy Center Reauthorization Act of 2004 (Oct. 30, 2004; 118 Stat. 2303)

S. 129/P.L. 108–411
Federal Workforce Flexibility Act of 2004 (Oct. 30, 2004; 118 Stat. 2305)

S. 144/P.L. 108–412
To require the Secretary of Agriculture to establish a program to provide assistance to eligible weed management entities to control or eradicate noxious weeds on public and private land. (Oct. 30, 2004; 118 Stat. 2320)

S. 643/P.L. 108–413
Hibben Center Act (Oct. 30, 2004; 118 Stat. 2325)

S. 1194/P.L. 108–414
Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (Oct. 30, 2004; 118 Stat. 2327)

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